



DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

SEANAD ÉIREANN

TUAIRISC OIFIGIÚIL—*Neamhcheartaithe*
(OFFICIAL REPORT—*Unrevised*)

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SEANAD ÉIREANN

Dé Máirt, 20 Samhain 2018

Tuesday, 20 November 2018

Chuaigh an Cathaoirleach i gceannas ar 2.30 p.m.

Machnamh agus Paidir.
Reflection and Prayer.

Business of Seanad

An Cathaoirleach: I have received notice from Senator Colm Burke that, on the motion for the Commencement of the House today, he proposes to raise the following matter:

The need for the Minister for Justice and Equality to put in place a more expeditious procedure for dealing with visa applications for spouses of medical or nursing practitioners who are working in the Irish healthcare system.

I have also received notice from Senator Gerald Nash of the following matter:

The need for the Minister for Justice and Equality to deploy additional resources to Drogheda Garda station to tackle the escalating drugs feud in the area and the need to address the low garda numbers in the area, compared with analogous population centres, on a permanent basis.

I have also received notice from Senator Maura Hopkins of the following matter:

The need for the Minister for Health to provide an update on the provision of a thrombectomy machine for Beaumont Hospital, which would deliver lifesaving treatment for stroke patients.

I have also received notice from Senator Paul Gavan of the following matter:

The need for the Minister for Education and Skills to make a statement on Ennis Educate Together national school in light of protected disclosures and whole-school evaluation reports.

I have also received notice from Senator Victor Boyhan of the following matter:

The need for the Minister for Housing, Planning and Local Government to provide an update on the status of the selected projects under the urban regeneration and development fund, the funding allocated to each project and the timelines involved.

I have also received notice from Senator Maria Byrne of the following matter:

The need for the Minister for Health to consider introducing an eyesight testing scheme for children in primary school.

I have also received notice from Senator Kevin Humphreys of the following matter:

The need for the Minister for Justice and Equality to consider the reintroduction of Operation Freeflow in our cities for Christmas 2018.

Of the matters raised by the Senators that are suitable for discussion, I have selected Senators Colm Burke, Nash, Hopkins and Gavan and they will be taken now. I regret I had to rule out of order the matter submitted by Senator Boyhan on the ground it is a repeat of a Commencement matter raised on 15 November 2018. I regret I had to rule out of order the matter submitted by Senator Humphreys on the ground that the Minister has no official responsibility in the matter. Senator Byrne may give notice on another day of the matter she wishes to raise.

Commencement Matters

Visa Applications

Senator Colm Burke: I thank the Minister of State for taking time out of his busy schedule to deal with this matter. Over the past number of months, I have come across a number of cases of people working in our health service, in some cases for quite a period of time, who have applied or had members of their families apply for visas to come to Ireland. Recently I dealt with a case where the person is now working in Ireland and has a full-time job here as a doctor but had to wait quite a long period of time before his spouse could get a visa to come here. The second case was of a family where one member is on the specialist register for paediatrics, which is not an easy position to get. It is an area she wants to specialise in. Her husband has been in permanent employment as a doctor in the HSE for the past ten years. They had a difficulty where her father had applied for a visa through the embassy in Mumbai and it took 14 months for the application to be considered. There was clear evidence he had sufficient financial support and would not be reliant on the State but after 14 months the application was refused. This is a couple with a young family. I am a bit concerned that quite a number of our hospitals outside the main centres of Dublin, Cork, Galway, Limerick and Waterford are finding it quite difficult to get medical doctors and nurses to take up positions. When they come here they are finding there are quite a number of hurdles they have to jump to get members of their immediate family into the country. We have a significant shortage of nurses and doctors. In some of our smaller hospitals up to 70% to 80% of doctors are from non-EU countries. The retention of doctors here is another challenge we have to face. It is an immediate challenge. There should be a process put in place to deal with visa applications where a member of the family is working here in a medical capacity either as a doctor or nurse. I am asking that the present procedure be reviewed.

Minister of State at the Department of Justice and Equality (Deputy David Stanton): The Minister has asked me to thank Senator Colm Burke for raising this matter which I know is very important to so many people who have come from abroad to work within our healthcare system. Their contribution to our healthcare system and the services they provide is much valued and appreciated. The Minister fully understands how important it is for them to be ac-

accompanied by their family. In that context, it is appropriate that our immigration system should seek to ensure visa applications are processed as quickly as possible bearing in mind the time needed to ensure all appropriate checks and assessments are undertaken.

The Minister is mindful that Ireland's economic interests require that our immigration system be competitive in its dealings with sought-after, highly-skilled migrants, such as medical and nursing practitioners. However, as with any immigration system worldwide, there is also an obligation on us to balance those interests and ensure that any sponsor has a proven and sustained capacity to earn sufficient income to provide for the needs of his or her dependants.

There are essentially two forms of "join family" visa. The first relates in the main to family members of an Irish citizen. This process requires that the Irish family member sponsoring the applicant must demonstrate he or she can support the applicant without undue recourse to public resources or services. The policy document on non-EEA family reunification first published in December 2013, and subsequently updated in December 2016, contains a stated business target that such visa applications to join Irish citizens should be dealt with within a period of six months from the date of the application. At present, such applications are being dealt with within four months in our Dublin visa office.

The second form of application relates to family members of non-EEA national sponsors seeking to join the sponsor in Ireland. Based on what the Senator has said I assume the applicant is in this category. Non-EEA national sponsors are divided into a number of individual categories under the policy document on family reunification I mentioned already. Sponsors who fall under category A include, for example, critical-skill employment permit holders, researchers and full-time, non-locum doctors. Category B sponsors include general employment permit holders.

Category A sponsors are eligible to sponsor applications for immediate family reunification, including being accompanied by family members on arrival in the State. Applications of this type are processed on an expedited basis in our visa offices, in as far as volumes of applications allow. Persons who fall under category B are eligible to sponsor applications for family reunification after 12 months. Although processed on an expedited basis, the business target for category A and Irish citizen sponsors for applications to be decided is within six months, while a 12-month processing target applies in respect of category B applications from the point of receipt.

The Irish Naturalisation and Immigration Service, INIS, of the Department of Justice and Equality received in excess of 125,000 entry visa applications in 2017, with almost 8,000 of this total being applications from persons seeking to join and reside with family members in the State. In India, for example, there was an exponential increase this year in the number of "join family" applications received at our New Delhi visa office from spouses and family members of persons granted work permits in Ireland. Approximately 50% of these applications are from persons entitled to apply for immediate family reunification. Additional staffing was assigned to that office during the year to increase the processing work there. I understand almost 90% of such applications are granted.

I understand too that category A applications are currently being processed within six months in that office, including critical-skills applications within four weeks. Steps have also been taken to streamline category B processing which currently stands at around 15 months so that the processing time will be brought back within the 12-month target as quickly as possible.

More generally, INIS has advised that the visa service is currently experiencing an increase in the number of visa applications across most categories of persons wishing to come to Ireland for a variety of purposes and in line with increased economic activity generally. Notwithstanding, processing times are on a par and in many cases have been significantly improved upon compared with those at the corresponding date last year.

The central concern, as with all visa services worldwide, in deciding on visa applications, is to strike an appropriate balance between protecting the country's vital national interests by maintaining an effective immigration regime while at the same time facilitating travel for those who meet the criteria. Each visa application is therefore decided on its own merits taking all factors into account.

On behalf of the Minister, Deputy Flanagan, I again thank the Senator for the opportunity to speak on this matter and I hope this brings some clarity for the people involved,

An Cathaoirleach: That was a very comprehensive response for Senator Burke.

Senator Colm Burke: I thank the Minister of State. The answer confirms what I had been told. I had understood it was Mumbai, but the office is in New Delhi. I understand some of the processing of these applications was transferred back to Dublin for a period of time. It is a problem because in the particular family referred to, both adults are highly skilled and work in the medical services in Ireland. They have a young family with one party living in Dublin and the other in Cork. They were looking for help from their own family and that visa was refused. That is what I do not understand. My request is to put people with medical qualifications in a particular category. We should try to expedite the process.

Deputy David Stanton: I again thank the Senator for raising this important matter. The Minister greatly values and appreciates the contribution of so many people from abroad who come to Ireland to work in our healthcare system and in all sectors of the economy generally. This of itself is a measure of the success the Government has had in managing our economy and putting it right, to the point where Ireland is now an attractive location for persons willing to come to work here. I agree fully this can only benefit our healthcare system and will add to it.

I have listened to what the Senator has had to say and I hope I have addressed his concerns as far as I can. I assure him that INIS, through its visa offices in Dublin and abroad, will continue to apply as many resources as possible to ensure applications for joint family visas to enter Ireland are dealt with as expeditiously as possible. On behalf of the Minister I assure the House it is not the intention of the family reunification policy to keep families apart, rather that resources are maximised so visa applications for family reunification are processed as quickly as possible, thus ensuring families are reunited without undue delay. The Senator can be reassured that every effort is being made to keep processing times to a minimum and a number of measures have been put in place generally to deal with the current caseload. This includes assigning additional staff to help process applications and, more generally, the streamlining of visa processing where possible. In any event, I am sure the Minister will ask INIS to continue to keep the position under review and do what it can to process such applications as quickly as possible. Each application is dealt with individually on a case by case basis.

Visit of Korean Delegation

An Cathaoirleach: I am sure Members of the House will join me in welcoming a parliamentary delegation from Korea led by Mr. Seong-min Yoo and members of the Ireland-Korea

parliamentary friendship group. On my behalf and on behalf of my colleagues in Seanad Éireann, I extend a very warm welcome to them and extend my good wishes for a successful visit to Ireland.

Commencement Matters (Resumed)

Garda Deployment

Senator Gerald Nash: Numbers-wise, the Drogheda area is being policed as if it were a small provincial town and not the sixth largest urban area in the country. At present, approximately 107 gardaí are situated in Drogheda Garda station with only one or two vehicles available at any given time. Units that should have 11 to 12 gardaí are down to five or six gardaí. This makes it very difficult to undertake normal policing work let alone to police, contain and manage an escalating drugs turf war that has seen dozens of violent incidents in recent weeks and at least three attempts on lives. Local gardaí, with the support of specialist national units, are working with their hands tied behind their backs.

The people of Drogheda need to be reassured that Garda numbers will drastically increase and those responsible for the mayhem being visited on areas of the town will be taken off the streets and locked up. In theory, we have very strong and robust anti-gang legislation as the Criminal Justice (Amendment) Act 2009 allows for those directing organised crime to be taken off the streets, sent for trial to the non-jury Special Criminal Court and deprived of their liberty for up to 15 years. The annual report on the operation of this Act published each summer shows that last year eight arrests were made under section 8 of the Act but not a single case of those suspected of being involved in directing organised crime was sent for trial. I am told that gardaí are anxious to use these powers but it is proving very difficult to convince the Director of Public Prosecutions to fully utilise them.

Decent people in the Moneymore area of Drogheda, which is really in the eye of this storm at present and which I have proudly represented for the past 20 years, are prisoners in their own homes and are wondering aloud as to why those responsible for this mayhem on the streets of Drogheda have yet to see the full rigours of the law rain down on them via the special powers available in legislation. Why does there appear to be reluctance on the authorities' behalf to fully utilise these significant powers and give the law-abiding people of Drogheda and other towns and cities the reassurance that they can live their lives in a normal straightforward way? The small number of people responsible for visiting mayhem on the streets of Drogheda need to be locked up and the full rigours of the law need to be targeted at them and their behaviour to ensure Drogheda is safe place in which to live, do business and raise a family. At present, far too many people in certain areas of Drogheda are under a self-imposed curfew because they feel they cannot go out in the streets after dark because of the fear at large in the community.

Deputy David Stanton: I will take this Commencement matter on behalf of the Minister for Justice and Equality, Deputy Flanagan, who unfortunately cannot be here this afternoon and sends his apology. On his behalf and on my behalf I thank Senator Nash for raising this very important issue this afternoon.

As the Minister for Justice and Equality outlined in his response to a Topical Issue debate on the matter last week in the Dáil, he is very much aware of the impact that the type of criminal activity that took place in Drogheda recently can have on a community. He understands the

concerns being expressed by the people of Drogheda, and other areas of County Louth, and has asked me to assure the Senator that this type of criminal behaviour will not be tolerated.

It is important to note that the Garda Commissioner is responsible for the distribution of resources, including personnel, among the various Garda divisions and that the Minister for Justice and Equality has no direct role in the matter. However, the Minister is advised that Garda management keeps this distribution of resources under continual review in the context of crime trends and policing priorities to ensure the optimum use is made of these resources.

The Minister is advised by the Garda authorities that the strength of the Louth division on 30 September 2018 was 331 of whom 12 are community gardaí. There are also 23 Garda reserves and 32 Garda civilian staff attached to the division. When appropriate, the work of local gardaí is supported, as the Senator pointed out, by a number of Garda national units such as the National Bureau of Criminal Investigation, the armed support units, the Garda National Economic Crime Bureau and the Garda National Drugs and Organised Crime Bureau.

The Minister is further advised that An Garda Síochána is conducting investigations into the events that took place in Drogheda recently. As such, it would be inappropriate for me to comment while these investigations are ongoing.

The Minister is informed by An Garda Síochána that gardaí have put in place a policing operation to prevent, detect and mitigate against any further escalation of violence. In addition to cancelling all Garda leave in the Louth division for two weeks, the operation will entail high-visibility patrols supplemented by personnel from the regional armed support unit, community policing units, district detective and drug units and divisional roads policing unit. An Garda Síochána has further advised that it will continue to make every effort to disrupt the activities of any groups that may be involved in these incidents, arrest and prosecute offenders and deny access to the road networks for those involved.

On drug-related crime, An Garda Síochána remains resolute in its determination to act against those in society who pose a significant threat to the welfare and well-being of our citizens and the communities they serve. A core focus of the work carried out by An Garda Síochána is aimed at tackling drugs and organised crime. All gardaí have a responsibility in the prevention and detection of all forms of drug-related crime in this jurisdiction. The continued disruption of the supply of all illegal drugs remains a priority for An Garda Síochána and the other State agencies tasked with responsibilities in this regard. Liaison is also ongoing between An Garda Síochána and other relevant stakeholders, including the local authorities, Tusla and the HSE to name but a few.

As the Senator has raised this matter, the operation of the Director of Public Prosecutions, DPP, is completely independent of the Government and the Minister, as it should be. The legislation and operation of such is under continuous review.

An Cathaoirleach: Senator Nash may ask a brief supplementary question.

Senator Gerald Nash: I would appreciate if I could get the view of the Minister on whether special powers need to be improved or implemented in a different way. However, I thank the Minister of State for the response.

Many more gardaí need to be deployed to the Drogheda area to make sure that people feel safe. This is a time when members of the public should support the work of the Garda. In this

context, I was surprised to hear that a local Sinn Féin Deputy took to the airwaves last week to make some serious claims. The Deputy claimed that there is a perception that local gardaí are protecting certain players in the local drugs scene because they are of value to them as informers and that is done with what might be described as a nod and a wink. Drogheda is extremely tense at the moment and these serious accusations have made the situation considerably worse for the gardaí in the area. The local chief superintendent challenged those views on local radio earlier. He said that these kinds of uncorroborated claims have “tarnished every member of An Garda Síochána”, which was an unprecedented slapdown. If anyone has any evidence whatsoever that points to any form of collusion, or the unlawful use of intelligence or its improper gathering, then there is an obligation, particularly an obligation on Oireachtas Members, to bring that information to either a senior member of An Garda Síochána to have that matter investigated or to take that information to the Garda Síochána Ombudsman Commission, GSOC, to have those matters investigated.

An Cathaoirleach: The Senator is well over time.

Deputy David Stanton: I thank the Senator for his contribution. I assure him that I will bring his views and comments to the notice of the Minister. This type of criminal behaviour has no place in civilised society and will not be tolerated. An Garda Síochána has overcome similar challenges in the past and will do so again. Gardaí in Drogheda have put in place a policing operation to prevent, detect and mitigate against any further escalation of violence, which will entail a number of high visibility patrols. Every Member will wish them every success in their work.

The Government is firmly committed to supporting An Garda Síochána in ensuring that the organisation is appropriately resourced. The resources available to the Garda have reached unprecedented levels with the provision in 2018 of more than €1.6 billion, including an allocation of €96 million for overtime. Furthermore, tangible progress is being made on achieving the Government’s vision of an overall Garda workforce of 21,000 personnel by 2021. Since the reopening of the Garda College in September 2014 almost 2,200 recruits have attested as members, of whom 35 have been allocated to the Drogheda district and assigned to mainstream duties. This and ongoing recruitment will clearly provide a significant amount of additional policing hours throughout the country both in terms of the increased number of new gardaí and the redeployment of gardaí to policing duties due to civilianisation. Over a period of time this is expected to alleviate pressure on the Garda overtime budget. It is also the case that the unprecedented investment being made in the ICT infrastructure of €342 million between 2016 and 2021 will enable An Garda Síochána to deliver on reform, work more efficiently and deploy the latest cutting-edge technologies in delivering professional policing and security services.

I agree with the Senator and I take this opportunity to reiterate that if anybody has any information about incidents, he or she should contact the local Garda station or ring the Garda confidential line at 1800 666 111 as soon as possible. Any information, no matter how small, could be of great assistance to the ongoing Garda inquiries. In addition, as the Senator said, GSOC is also there for certain types of information and complaints.

Hospital Equipment

Senator Maura Hopkins: I thank the Minister of State at the Department of Health, Deputy Finian McGrath, for taking this Commencement matter. I am sure he is very well aware of

the issue with the thrombectomy machine because it is situated in Beaumont Hospital, which is in his constituency. I raise this matter because I have worked with stroke patients for a number of years as a healthcare professional. I am very much aware of the positive impact thrombectomy services can have on people. In many cases it is the most effective life-saving treatment for stroke patients.

Evidence clearly indicates that thrombectomy services can reduce stroke deaths by half and reduce the rate of permanent disability by a similar amount. I cite this evidence because it is from the ESCAPE trial in which Beaumont Hospital was involved with many other countries across the world to try to provide evidence of the effectiveness of this service. However, due to the poor condition of the equipment in Beaumont Hospital, patients' lives are being put at risk. I have become aware from the Irish Heart Foundation that the thrombectomy machine being used in Beaumont Hospital is not fit for purpose in a modern health service. The machine has broken down on many occasions and, worryingly, it has also broken down while patients have been in receipt of treatment.

I should outline what a thrombectomy is. It involves a tube being inserted into an artery in the groin which travels through blood vessels to the brain, monitored and guided by X-ray. It sucks up the clot from the brain and restores blood supply. It is very worrying, therefore, that this thrombectomy machine is not fit for purpose in the first place and is also breaking down when patients are receiving treatment.

I am seeking an update from the Minister of State in respect of ensuring a new machine will be installed and that there will be further expansion of this service in Beaumont Hospital. There is a similar service in Cork.

Some 248 patients benefitted from the thrombectomy services at Beaumont Hospital in 2017. I have been informed in writing by the chief executive of the hospital that it is admitted that patients have received substandard treatment. This is really not acceptable. We know this service can have a positive impact on many people. I understand it would cost approximately €1.5 million to replace this machine. This must be a priority, especially given that we will put €17 billion into our health service next year. We must ensure stroke patients get an excellent service that includes the modern and up-to-date treatment they require. We must support them in seeking to reduce the onset of disability-related limitations. We know there is strong evidence of the positive benefits of thrombectomy services. I ask the Minister of State to update the House on when we will see this new machine being put in place.

Minister of State at the Department of Health (Deputy Finian McGrath): I thank the Senator for raising this important issue. I am aware of her work as a health professional. I have listened carefully to everything she has said. I will take on board all the points she raises during this debate.

I am pleased to have an opportunity to update the House on the thrombectomy service in Beaumont Hospital. It is estimated that every year, some 10,000 people have a stroke-related event and some 2,000 people die as a result. Thrombectomy is an emergency endovascular procedure that is provided under radiological guidance to remove clots from patients with severe strokes using specialist devices. There is strong evidence of improved outcomes for patients who undergo thrombectomy treatment, which can be life-saving and can prevent serious disability.

As Minister of State with responsibility for disability services, I take this very seriously. The provision of emergency endovascular thrombectomy is highly specialised. Mechanical thrombectomy procedures are provided by specialist neuroendovascular radiologists in Beaumont Hospital and Cork University Hospital. The number of patients undergoing this procedure has been increasing each year. There were 122 cases in 2015, 172 cases in 2016 and 280 cases in 2017. The HSE has indicated that two new biplane neuroangiographic imaging systems are required because the existing systems are at the end of their lives. This project includes the replacement of the existing biplane angiograph imaging system, the provision of a second biplane angiograph and the associated building works necessary to accommodate the second machine. The simple replacement of the existing machine would result in a discontinuation of service for a prolonged period, thereby necessitating the installation of a second device. It is estimated that the project will cost €6.688 million, with a project timeline of 24 months.

The HSE is responsible for the delivery of health infrastructure projects. All proposed projects must be submitted to the HSE's capital and property steering committee for approval and prioritisation prior to inclusion in multi-annual capital plans. A submission for the development of an expanded neurointerventional radiology service at Beaumont Hospital was received by the HSE national capital and property steering committee in February 2018. The submission for expanded services at Beaumont Hospital is supported by the HSE acute hospital directorate and is recommended for inclusion in the capital plan.

The HSE is developing its national service plan and capital plan for 2019. It is aware of the need for the development of the thrombectomy service at Beaumont Hospital. The HSE will consider this development in the context of planning for 2019 within available funding and the process in place for the agreement and prioritisation of projects in the capital plan. All projects such as the proposed thrombectomy service development must comply with national and EU spending and procurement requirements. They require a lead-in time to complete the various development stages, including appraisal, design, planning, tender, construction and commissioning. The Government is committed to making tangible and sustainable improvements in our health services. The Department, the HSE, the RCSI hospital group and Beaumont Hospital are supportive of the project to develop thrombectomy services at the hospital, and the need for this capital development is recognised in supporting the delivery of this key service to patients. It is an absolute priority for me as well.

Senator Maura Hopkins: I thank the Minister of State. I have two questions. I refer to the response with regard to the HSE, and I am aware of this issue from asking previous questions on it. The Minister of State said that the HSE will consider this development in the context of planning for 2019 and he mentioned the prioritisation of projects in the capital plan. When will we know that funding has been allocated to ensure that we have new thrombectomy services in Beaumont Hospital, particularly as the Minister of State said that he knows the evidence is clear that thrombectomy services are critical in ensuring that we reduce the level of disability for people and reduce mortality rates?

Having worked within the stroke services, I know that some improvements have been made but it is not enough. The Minister of State said in this response that the Government is committed to making tangible and sustainable improvements in our health services. I want the Government to be committed to ensuring that it makes improvements in our stroke services. The point I am making today is that we need to see a new and expanded thrombectomy service in Beaumont Hospital to ensure we support as many stroke patients as possible.

An Cathaoirleach: We are way over the time limit, so I ask the Minister of State to be brief.

Deputy Finian McGrath: I thank the Senator again for raising this important issue. The 2019 service plan will be finalised in the coming weeks. I know that from my own portfolio of disabilities so the answer to the Senator's first question is that it will be in a matter of weeks.

The second point the Senator raised was a very important one. We need to make improvements in the stroke services and I will bring that point back to the Minister. This service works and we have seen it work. The Senator knows that from her previous work as a health professional and I know it from talking to staff, doctors and patients in Beaumont Hospital. The hospital is only a few hundred yards from my home, so I know exactly what the Senator is talking about. We need to expand the services and I am committed to that. The Government is committed to supporting the hospital to develop its services in the future. This commitment is recognised in the programme for Government and the partnership plan.

Beaumont Hospital has a reputation for the delivery of high quality and safe care for its patients. The development of the thrombectomy service will support the delivery of key services to patients served by Beaumont Hospital. I will make this a priority issue and report back to the Minister. I will also keep an eye on it for the HSE 2019 service plan.

Protected Disclosures

An Cathaoirleach: I welcome the Minister for Education and Skills, Deputy McHugh, to the Chamber. I ask Senator Gavan to proceed with his Commencement matter.

Senator Paul Gavan: The Minister is very welcome. Ennis Educate Together national school was founded in 1998. In recent years there have been revelations about shocking and long-standing failures of school management. There are also serious questions for the school patron, and it gives me no pleasure to say that as I have long been a firm supporter and advocate of Educate Together. These revelations have come out largely thanks to the courage of a former deputy principal at the school, who is with us in the Gallery today.

The whole school evaluation report of 2009 for Ennis Educate Together national school highlighted that the principal had significant difficulties carrying out his role, whole school planning was poor, there was no policy on staff rotation and no child protection policy, there were literacy and numeracy deficits and no ratified policy for pupils with special needs. In short it was an absolutely shocking situation. Seven years later a further whole-school evaluation report confirmed that no action had been taken to rectify these issues recording the management of the school as ineffective and unsatisfactory. There was still no child protection policy. The principal's performance was graded as unsatisfactory with regard to instructional leadership and school administration. A follow-up inspection report last year again highlighted the need for significant development and improvement with regard to the principal. By June of this year pupil enrolment was down to 63 students, a drop of two thirds.

The record shows that the Department of Education and Skills sat with folded hands throughout these years of failure. Worse than this, the Department allowed the only teacher with the courage to speak out about these failures to be forced into an unplanned premature retirement in 2012. This decision was taken after years of trying to address the management failures of the school and after years of raising serious concerns with the board of management and Depart-

ment inspectors, concerns that went unheeded. This is in stark contrast to the principal who was allowed to continue in his role until June of this year when he chose to retire. To this day the whistleblower does not know why the Department failed to take any action. Why was the principal allowed to continue in his post without any intervention by stakeholders, the board of management, school inspectors and the Department despite their knowledge of the desperate state of affairs at the school?

In 2015 the former deputy principal made protected disclosures directly to the then Minister of State at the Department, Deputy Jan O'Sullivan. There is no doubt that the 2016 whole school evaluation report was a direct result of this unprecedented intervention. However, the Department of Education and Skills has to date failed to respond to questions raised with regard to financial concerns, specifically activities over school registers which a school inspector said could constitute fraud. Among items of concern cited was a stolen blank cheque, subsequently cashed for €10,000. Why was the school's board of management allowed to ignore an occupational health report on the whistleblower? Why did the so-called mediation process offered to her not have protocols or due process? When will the whistleblower in this case get recognition and justice from a Department that has failed not just her but pupils at the school for a decade? This is a delivering equality of opportunity in schools, DEIS, school dealing with students from disadvantaged and vulnerable backgrounds. What message is the Minister sending to whistleblowers if he fails to acknowledge and deal with the appalling way in which this lady has been treated? Will he at least commit to meeting with her to discuss her case rather than dismiss the one person with the courage to speak out about the failings at Ennis Educate Together school?

Minister for Education and Skills (Deputy Joe McHugh): Gabhaim buíochas leis an Seanadóir as an cheist agus don seans labhairt leis. I thank the Senator for giving me the opportunity to familiarise myself with this issue and to fill in the background which the Senator and people in the school are familiar with. I want to put on the record the position regarding Ennis Educate Together national school in respect of the protected disclosure received by my Department and school inspections carried out in recent times by the Department's inspectorate.

The Department received a protected disclosure in respect of this school on 25 October 2015. The Department treats all protected disclosures seriously and follows up on all the issues raised in disclosures. In general, this involves engagement with the patron and board of a school for the purposes of determining and resolving the issues raised. It can also involve school inspections and financial audits by the financial support services unit where necessary. The protected disclosure and the whole-school evaluation, WSE, carried out on 11 February 2016 in respect of this school identified a number of issues concerning the general governance, management and leadership of the school. These concerns related to the absence of a board of management, non-compliance with national child protection policy, financial management concerns and the decreasing enrolment of the school over a number of years. My Department had been aware of the unsatisfactory performance of this school from ongoing inspection reports and had been working with the school to improve its overall performance for the benefit of the teaching and learning experience in the school.

A new board of management was established on 12 July 2016, which was a significant step for the school as it starts to implement the necessary reforms required. Under the Education Act, the board of management is responsible for the day-to-day running of the school. My Department has also been advised that a new parents' association has been established. The active involvement of parents in all aspects of the education of their children is important.

My Department met with representatives of the patron and members of the new board on 15 July 2016. The purpose of the meeting was to discuss with the representatives a range of issues including those mentioned in the protected disclosure and the whole-school evaluation report, which had also set out a number of recommendations for improvement. These recommendations impacted on the management and leadership of the school, the implementation of child protection policies, the formation of a board of management and parents' association, and other important matters impacting on teaching and learning. My Department was advised at the meeting that work had already begun on addressing and prioritising the specific actions outlined in the whole-school evaluation report. My Department informed the school representatives that an action plan outlining the specific actions for improvement would be required from them. My Department wrote to the school on 7 September 2016 on that basis and a school action plan was provided to the Department on 7 November 2016. A follow-through inspection report by my Department's inspectorate in April 2017 found that good progress had been made in a number of areas with a few aspects for improvement remaining. A new school principal was appointed on 1 July 2018. This appointment was crucial in terms of improving the leadership role within the school.

My Department wrote to the discloser in August 2018 and advised of the positive changes that have occurred in the school and that the Department would continue to monitor the school's progress in implementing the recommendations of the WSE report. However, while the school has a new principal and a new board of management, which are important positive developments, it would take the school some time to fully implement all of the changes required. The letter also expressed thanks to the discloser for their concern and for raising important issues in respect of this school in their correspondence. I want to express publicly my own similar sentiments in being grateful and thankful to the discloser.

I hope I will get an opportunity to have a chat with the Senator after this for a few minutes. If follow-up is required, I am happy to do that. I thank the Senator again for the opportunity to outline the progress in respect of this school to the House.

Senator Paul Gavan: I thank the Minister. In fairness, it confirms the crucial role of the whistleblower and her protected disclosures in terms of exposing the wrongdoings and hopefully putting the school onto a better path. I welcome the Minister's offer to have a chat with the whistleblower and ask him to follow through on it. If we have learned anything from recent news in terms of whistleblowers in general it is that we need to listen to them. I ask the Minister to follow up with a formal meeting with the whistleblower in question. That is what she is looking for in terms of recognition of the fact that her plight has been unaddressed to date. Her career was cut short and she has suffered significantly financially in order to bring the school to a better place.

An Leas-Chathaoirleach: The Minister can have a word with the Senator afterwards.

Deputy Joe McHugh: Yes. I thank the Senator for raising this. I am new in the job and have to familiarise myself with all these issues but I want to put on record the important role that whistleblowers play. I agree with the Senator that one thing we have learned in the last years is the importance of listening attentively. While creating awareness, the duty of care and our own legislative responsibility are important, the most important thing we can do in politics is follow through on the action.

Gabhaim buíochas leis an Teachta as ucht an seans labhairt leis inniu.

20 November 2018

Sitting suspended at 3.20 p.m. and resumed at 3.30 p.m.

Order of Business

Senator Jerry Buttimer: The Order of Business is No. 1, Health Insurance (Amendment) Bill 2018 - Order for Second Stage and Second Stage, to be taken at 4.45 p.m., with the contributions of group spokespersons not to exceed eight minutes and those of all other Senators not to exceed five minutes; No. 2, Employment (Miscellaneous Provisions) Bill 2018 - Second Stage, to be taken on the conclusion of No. 1 and to adjourn not later than 7 p.m., with the contributions of group spokespersons not to exceed eight minutes and those of all other Senators not to exceed five minutes; and No. 3, Judicial Appointments Commission Bill 2017 - Committee Stage (Resumed), to be taken on the conclusion of No. 2 and to be adjourned after two hours, if not previously concluded.

Senator Catherine Ardagh: I will begin by congratulating Vicky Phelan on being included on the BBC list of trailblazers, leaders and everyday heroes. We all know Vicky Phelan took on the State when she discovered that she had been given an incorrect smear test result. Instead of accepting a gagging order by the State, she went on and was able to reveal the magnitude and scale of the CervicalCheck scandal, and many women who were kept in the dark had a light shone on why they were suffering and given incorrect smear results. I congratulate her and commend her on her hard work and service to the State.

I congratulate the Irish rugby team on its victory last weekend. It shows that dedication, commitment and hard work, not only by the players and management but also by backroom staff, physiotherapists, doctors and everyone else involved in the team, pay off. I congratulate them all.

On a more serious note, I would like to raise the issue of crime in the city. I heard anecdotal evidence about a couple in their 60s who were mugged while walking home in a quiet suburban area at 10.30 p.m. in the evening. The lady's arm was broken in the process. There are thugs on our streets and nothing seems to deter them. They do not seem to have any respect for the rule of law. The issue is that gardaí are not on the beat anymore. They are not very visible on our streets. I have been saying time and again in this House that we need an increase in community policing. The Leader will say the Government has increased the number of trainee gardaí in Templemore but we are just not seeing them on the beat. We need to see them on the beat. One does not see them walking the streets of Dublin. We do not have the connection we used to have. I used to know the name of the community garda in every area in Dublin, including mine. That connection just does not exist anymore. The Government needs to examine this to ensure a connection between the youth and community gardaí.

The third issue I would like to raise is housing. Rents are currently 30% higher than they were at the peak of the Celtic tiger era. The average rent is €1,300 per month. We know that rent pressure zones, RPZs, are simply not working. There are too many exemptions. Landlords are saying they are giving the place a lick of paint or that family members are moving in. It does not seem that those affected will be getting their dream homes, and they are certainly not getting any rent certainty. It is very frightening for families living in rental accommodation. They just do not know whether they will be in it in the next six months. They deserve to know they will have a roof over their heads in the next year.

An Cathaoirleach: Many voices can be heard. If the House would like me to adjourn for half an hour until there is ciúnas, I will do so. I find it hard to hear the Senator speaking. The Members making noise know who they are. They should have a little respect for those who have the floor.

Senator Catherine Ardagh: I wish to conclude on the delays associated with An Bord Pleanála. The statutory time limit for dealing with applications should be 18 weeks. Many applications are not being turned around in that time, however, which is causing serious delays for builders who want to get started on houses. This, in turn, has cost implications. If a start date is postponed, there are penalties. The Government needs to ensure more resources are given to An Bord Pleanála. One of the little clicks in the chain of the housing issue in Dublin is that the Government just not seem to grasp this. There needs to be a varied, wide-ranging approach to this issue. Addressing the performance of An Bord Pleanála is one aspect.

Senator Michael McDowell: A number of years ago, the Department that occupies the Custom House enacted laws that enabled it to ban bedsits in Dublin. There was a four-year lead-in period for this to take place. Eventually, bedsits became illegal. They were defined as accommodation where there was any question of having to share kitchen or bathroom facilities in any building. The result of the edict from the Custom House was that between 8,000 and 12,000 dwellings in Dublin were declared illegal. The consequence was that many people who were quite happy in bedsits, some of which were of reasonable quality, although they were modest since facilities had to be shared, were effectively evicted by their landlords. All the housing stock was changed. As a result, many houses were put up for sale at a time when the market was poor, people were evacuated from those houses and all of that additional potential housing stock was eliminated.

The same Department has come up with a number of housing plans since then, but it has had little success in implementing social housing, affordable housing or whatever, because it deposes most of this activity to the local authorities. All of that is bad enough and is a colossal chapter of ineptitude going back to 2009, but I am most concerned about the increasing number of stories about the standards of accommodation which are legal but totally unconscionable. There are stories of little box bedrooms with four bunks are being occupied by adults or of people working shifts to share a single bed. This kind of slum landlordism is apparently permissible. No real effort is made to inspect rented premises to see whether there are triple bunks in small rooms or rooms with six or eight people living in what is effectively a squalid dormitory. This is going on day in, day out in our capital city. The local authorities and the Department, which were so keen to close down bedsits in 2009, have not lifted a finger to assist with decent living standards in this city.

I appreciate that it is a complex problem, but inspection is not complex. It requires people knocking on doors and asking to see what is happening in the premises. In the RTÉ documentary, there was one premises in Crumlin which was a shocking example. We are expected to believe this all stopped because of that documentary, but I do not believe for a minute that it stopped. People are being exploited and gouged to live in these conditions, and the Department based in the Custom House is doing nothing to ensure that it stops. I ask the Leader to invite the Minister, Deputy Eoghan Murphy, to the House to explain precisely what he is doing to enforce even remotely decent housing standards in this city.

Senator Rose Conway-Walsh: I wish to raise the issue of planning permission and the obstacles for many people in rural Ireland who are refused planning permission. I commend

my colleague, Deputy Martin Kenny, on the Bill he proposed to amend the Local Government (Water Pollution) Act 1977, which will permit local authorities to grant a wastewater discharge licence to applicants who want to build one-off rural houses where the percolation test has failed. I do not say this to increase pollution in rural areas, but we must be cognisant of the advances in technology and treatment systems that will allow waste water to be treated in a much more environmentally-friendly way than is currently the case. The Bill would move us away from zero discharge, which has prevented many families from building houses in rural areas. I know many families in Mayo and other parts of the country who are forced to pay high rents in different areas. I know one family who must have five jobs in total to pay the high rent, yet they are refused planning permission to build a modest house on their own land. That is not right. The planner goes out and if there has been incessant rain, naturally the trial hole will be full. The matter must be taken in the wider context of there being percolation solutions to address those problems. God knows, we have enough depopulation in rural Ireland and enough families struggling to make a living that we must address this. That is why I urge all parties to support this legislation and allow it to go through to the Select Committee on Housing, Planning and Local Government where it will be further scrutinised. Time is of the essence because depopulation in rural areas of Ireland is a very serious problem. We want all the families which can remain in rural Ireland to stay there. We want our schools to be vibrant, and to have vibrant communities but that is not possible if we do not facilitate people in getting planning permission, often for their own land.

I ask that the Leader invite the Minister to the House to discuss planning permissions and the obstacles to people being able to build their own homes in rural Ireland.

Senator Alice-Mary Higgins: It was wonderful to be part of a photograph of all current and former women Members of the Oireachtas. I pay tribute to all those former women Members and the immense contribution that many of them have made to both Houses.

Sunday was World Day of Remembrance for Road Traffic Victims. Last year 158 people lost their lives on Irish roads, which included 15 cyclists and 30 pedestrians. It is important that we examine issues such as poor planning which can encourage speed and give priority to individual private vehicles which have greatly contributed to these deaths.

Roads are shared spaces that should feel safe and available to everybody of all ages and abilities. They should not feel like a battleground and should not be something about which people feel nervous. One of the main reasons people choose to stop cycling is fear of danger on the road. If we are to have a sustainable future and achieve Vision Zero - the idea that no one should lose their lives on our roads - then better planning and planning for sustainable transport will be a major factor. It was notable that at the extinction rebellion gathering - a strong gathering at the weekend of activists from all parties and none who are concerned about the environment and climate change - some of the loudest cheers came from those who called for a massive sea-change in sustainable public transport.

Another occasion this weekend was the awarding of the Tipperary International Peace Award to the former President of Colombia, Juan Manuel Santos, for his extraordinary work in ending 52 years of conflict in Colombia and I congratulate him for his award. Ireland has a key role in that process, where former Tánaiste, Eamon Gilmore, was EU envoy and helped to achieve that peace agreement. Juan Manuel Santos was one of several activists who came to Ireland over the weekend. A separate event, hosted by the Peace and Neutrality Alliance, brought activists from across the world to Dublin to participate in a conference in Liberty Hall to examine how

we can favour diplomacy and democratic empowerment rather than ramping up militarisation and increasing military bases to secure peace and pass on a peaceful world to our children.

Today is World Children's Day. There is a very real question of whether our children will inherit a planet in jeopardy where the threat of war is revisited or if we can pass on to the next generation a world that is in better shape. I welcome the initiative on early years and early years education which the Minister, Deputy Zappone, announced today. I hope the Big Start campaign and a campaign for a living wage for childcare workers will be part of that.

However, there are wider questions that we must ask about our responsibilities to children on international children's day. For instance, are the children of lone parents, who are at such greater risk of poverty, being adequately supported by the State? There are also the children who were born here but who do not have citizenship who also need to be looked after. We will be busy, but I ask the Leader that either before Christmas or early in the new year we would have a conversation about the State's duty to children. As we commemorate the First Dáil, the first duty of the State under the Democratic Programme adopted by the First Dáil in 1919 was a duty to children. It is a debate from which we would all benefit.

Senator Gerald Nash: I join with the sentiments expressed by my colleague, Senator Higgins, on the World Day of Remembrance for Road Traffic Victims. I participated in a ceremony in Drogheda organised by the Augustinian congregation there, a group of priests that does remarkable work with the community. It is a very progressive group which holds a very important remembrance service annually. It is organised by the priests, the wider church community in Drogheda and, importantly, the parents, family members and friends of victims of fatalities on our roads. They do a really important job of raising awareness of responsible behaviour on our roads and the dangers associated with speeding.

I will raise the concerns I have and which have been expressed to me over the past number of days by constituents who have been in contact who are concerned about the decision by the Minister and the Revenue Commissioners to review flat-rate tax reliefs. It is having a significant impact on ordinary workers up and down the country. As we know in the House-----

An Cathaoirleach: I am sorry to interrupt the Senator but there are conversations going on on one side of the House and I can barely hear the Senator. Senators should be respectful of those who are speaking. Voices carry in the Chamber and people are continually coming in so if Senators want to converse they should go out to the waiting room.

Senator Gerald Nash: As I was saying, these reliefs are very important opportunities for ordinary working people such as bar workers, nurses, employed electricians, rail workers and others to claim back some small reliefs, for example for the purchase, cleaning or laundering of uniforms. I accept the reliefs have developed on a rather piecemeal basis over the years but now we understand Revenue is carrying out a very broad review of the reliefs and is likely to close them down. For a bar worker, they are worth €93 a year; for an employed electrician, €331 a year; and for a fire-fighter, €272 a year.

This issue was first brought to my attention by mine workers in Tara Mines in Navan, many of whom live in my constituency, who are in receipt of reliefs of €1,312 per year because of the nature of the work they do and associated costs. It now looks like those reliefs will be reduced and, in all likelihood, abolished. Doctors gain about €600 to €700 each year from this relief which involves reclaiming moneys expended on professional subscriptions.

I hope many Members of the House are trade union members. I am and I know Senator Higgins and others are. We are not in a position and neither is any member of a trade union to claim any relief on trade union subscriptions so there is no equity in this. It is important we provide some clarity on it. I ask the Leader to invite the Minister for Finance to the House at the earliest opportunity to allow us to debate the framework involved, when the decision was taken and whether it is an open and transparent process.

Self-employed people and high-flyers have plenty of reliefs available to them in pension reliefs, property reliefs and so on which are not available to PAYE workers. The abolition of these small reliefs will cause real problems for ordinary working people up and down the country. It is important the Minister comes into the House to state very clearly why the review is taking place and within which framework it is taking place. If it is taking place, it needs to be clear, open and transparent.

Senator Joe O'Reilly: Before I get into what I have prepared to speak about, I agree with the remarks made by Senator McDowell. It was a grave mistake to take bedsits out of circulation in Dublin for the student population and many other sectors of the population. As the Senator said, perhaps such people are in worse conditions now. It was a very significant error. I ask the Leader that it be looked at and debated. It is not possible to recreate some of them now but they served a great purpose.

I am delighted the Minister, Deputy McHugh, has decided to review the status of history as an optional subject for the junior certificate, in other words to look at the prospect of making it a compulsory subject again. There are a number of reasons for this. One needs an understanding of the past to understand where we are at now because to have a tolerant society and the kind of respect we should have for others and their traditions, one needs an understanding of where they come from and where and how it all began.

Of course that is not the kind of teaching that is prejudiced; it is holistic, fair teaching of history. In a community like mine in Cavan and Monaghan, and all along the Border, it is particularly necessary. In the context of Brexit, the people understand where the various traditions are coming from. In the decade of centenaries we need to understand people are in different situations and look at things differently. It is necessary to create a tolerant, humane and mutually respectful society. I am very confident that the review, please God, will allow the return of history as a mandatory subject. It is a very civilising and important part of the humanities. It is part of a good holistic education and should be brought back.

Senator Ned O'Sullivan: Over two years ago, I had a serious accident in a hotel bathroom. I sustained very serious injuries, multiple breakages and so on. I have hesitated to speak about it since because a few people might think I was feathering my own nest with a claim or something. I understand that the Statute of Limitations now applies. Since that accident I was approached by many other people who had similar accidents in hotel rooms where the shower and bath were combined in one.

Senator Michael McDowell: Very dangerous.

Senator Ned O'Sullivan: It is very dangerous indeed. Most new-build hotels either put in a separate walk-in shower or, if necessary, a custom-designed low-wall bath with anti-slip devices in it along with the shower. I was quite shocked recently when I stayed in a very well-known and relatively recently refurbished hotel - I will not name it. I found myself climbing

into a bath, the walls of which were as high as Becher's Brook with a very narrow base.

Senator David Norris: The water jump.

Senator Ned O'Sullivan: It was not designed as a shower; it was designed as a bath with a very narrow V-shaped bottom on it. To get purchase it would take someone, especially of my years, to stand legs akimbo in order not to fall. This could give rise to many accidents. I ask the Leader to ask the relevant Minister, probably the Minister for Housing, Planning and Local Government, Deputy Eoghan Murphy, in terms of health and safety what plans the Government has to introduce regulation for hoteliers. I am not trying to make trouble for existing owners of guest houses or bed and breakfasts. In future build and renovation of hotels and guest houses, showers and baths should be fit for purpose, and if they must be combined in one, they should be treated to the most stringent health and safety regulations as regards height, width, non-slip and so on.

An Cathaoirleach: If the Senator had submitted a claim, he might have got more attention.

Senator Ned O'Sullivan: I deliberately decided to wait until that period was over.

Senator Victor Boyhan: In the past week the Parliamentary Budget Office has circulated an analysis - I know we are not dealing here with finance - of the National Training Fund. This was not envisaged to be a long-term fund; it was a tax or tariff on employees. However, I believe it has great scope. This document refers to potential scope for training and apprenticeships, and how this area may be reformed, as has been suggested. It is an important source of funding to assist people in apprenticeships.

I am mindful of the post-Brexit needs in the construction industry for painters, plasterers and decorators. Central Statistics Office data show that many skilled people have emigrated and not returned. We have a major shortage of craftspeople and tradespeople. We need them to rebuild the economy and provide greatly needed houses. I ask the Leader to invite the relevant Minister to come to the House to discuss the scope of and plans for the National Training Fund.

As an earlier speaker mentioned, today is International Children's Day. I am reminded that under this Government's watch the only six rehabilitation beds for children nationally in the National Rehabilitation Hospital in Dún Laoghaire remain closed.

We have been told there is an issue with employment and contracts but they are still closed and another six have been closed. This means that, today, 12 beds are closed. They closed in January 2017. We are heading into 2019. Many are suggesting that there will be an election and that health will be an issue. I will certainly be banging this drum because
4 o'clock come in here week in and week out to advocate and ask the Government parties to come together and explain how they can stand over 12 closed beds at the National Rehabilitation Hospital. This is nothing short of disgraceful. I can confirm that six of them are the only specialist beds in the country for children.

Will the Leader organise for the Minister - and nobody less - to come to the House? The Minister has ultimate responsibility and will be on our television screens within months standing over his record in health. I support a lot of what he does but nobody from any political party could stand over 12 essential rehabilitation beds being closed. Will the Minister come before the House to explain what he is doing about it and when he will put in place the necessary funding to reopen these essential beds?

Senator Ray Butler: Several weeks ago, the Minister for Health, Deputy Harris, opened a new 12-bed unit at St. Joseph's community nursing unit in Trim. We have a terrible shortage of respite care beds in Meath, with only 15 in the county which are scattered all over the place. Compared with Dublin, which has hundreds of respite care beds, Trim has a great opportunity with St. Joseph's community nursing unit because there is a greenfield site of a couple of acres available. There is no reason we cannot continue to build more respite care beds at the site. Will the Minister put money towards more respite care beds in the Meath area?

Do Members recall Tony O'Brien, the former HSE-----

Senator David Norris: Could we ever forget him?

Senator Ray Butler: Well said, Senator Norris.

An Cathaoirleach: Do not bring somebody's name into the public domain.

Senator Ray Butler: The former HSE boss-----

An Cathaoirleach: Be a little more delicate.

Senator Ray Butler: -----stated in an article in the *Meath Chronicle* two weeks ago that the accident and emergency services downgrade in Navan never happened and that he regretted this. My late mother spent a lot of time in the accident and emergency department in 2013 and 2014 when she was sick. I saw at first hand why the reconfiguration did not happen and I witnessed the downgrading of the accident and emergency department in Navan. I saw elderly people waiting for taxis and ambulances in order to be brought to the bigger hospitals at Blanchardstown, Drogheda and Cavan from Navan but when they were halfway there, they were sent back because those facilities were overflowing with people and could not cope. We need an accident and emergency department in Navan. The former HSE boss, who is now retired, should keep his mouth closed. Will the Minister come before the House to discuss what we will do with the accident and emergency department in Navan?

Senator Máire Devine: Earlier today, I and hundreds of people joined survivors of the Stardust nightclub and the families of the victims outside the Office of the Attorney General on Merrion Square. We all know the horrific story of the 48 young people who died on St. Valentine's Day in 1981. The Justice for Stardust campaign group has gathered 48,000 signatures. The families state that they have the new evidence, uncovered through freedom of information requests and previously unheard witness testimony, to warrant a new inquest. They have often claimed there was a cover-up by the Government at the time. This has been going on for too long and it is time the families were given the truth. They need peace of mind. Will the Leader ask the Minister for Justice and Equality to come to the House to justify why he believes there is no reason for a new inquest? The original inquest declared that the fire was caused by arson but that was ruled out following a fresh inquiry in 2009. New information has emerged and the people concerned need to have their say.

To echo other comments, I want to give a shout-out to one of the world's most influential people - Vicky Phelan. Comhghairdeas to her. She is a remarkable person, especially when one considers that if she had taken the advice to undergo palliative chemotherapy she would be dead now. Fortunately, she carried out her own research into new treatment and I hope that she will live for a long time. Well done, Vicky. Well done, to us all.

Senator David Norris: I draw the attention of the House to an editorial published in last Saturday's edition of *The Irish Times*. It is extremely damning. It is a long time since I have read such a negative editorial and it bears directly on the business of this House. The headline for the article could be "Scrap the Judicial Appointments Bill". The first line reads, "It is still not too late for the Government to scrap the ill-advised Judicial Appointments Bill being foisted on the country at the whim of Minister for Transport Shane Ross." In one sentence there are four crucial negatives: "not too late"; "ill-advised"; "foisted"; and "whim". The only thing I have against the editorial is that it continued, "The Bill is bogged down in the Seanad because of a rearguard action led by former attorney general Michael McDowell." What about his second in command? Here I am.

Senator Máire Devine: That is scandalous.

Senator David Norris: In the article reference was made to Minister Ross's complaints.

An Cathaoirleach: The Senator can make his points to the Minister when he is in this Chamber later.

Senator David Norris: I will, indeed.

An Cathaoirleach: Yes.

Senator David Norris: The article mentioned that the Minister, Deputy Ross, talked about people, "who will stop at nothing to frustrate democratic decisions." However, the editorial pointed out that all of us with our various techniques of holding the Bill up to scrutiny are merely exercising our democratic rights, "to use all available parliamentary means to scrutinise a deeply flawed piece of legislation." The term "deeply flawed" is another negative.

The editorial noted that Fine Gael Senators and Deputies have objections to the Bill but are afraid to do anything because of the agreement they have to bring Deputy Ross into government, the latter stating the legislation is supposed to get rid of cronyism. As pointed out in the editorial, the legislation will do nothing of the kind whatsoever. This is in the editorial, which is an independent voice. It continued, "It will simply mean that the recommendations for appointment to the judiciary will be made by a body which does not have the necessary expertise or experience to make informed recommendations." That is pretty damning stuff. The author of the editorial admits that there is a case for reviewing the judicial appointments process but points out, "this Bill was drafted on the basis of no serious research, analysis or international comparisons", and that the Government has failed to prove any deficiency or that any rotten judges were appointed.

The editorial continued, "It is about time that the Fine Gael majority in the Cabinet", put their foot down and instructed, "Minister for Justice Charlie Flanagan to go back to the drawing board" with this Bill whether or not it entails the resignation of Deputy Ross. We could all live with that one.

Senator Maura Hopkins: I want to raise the issue of rail services in the west of Ireland. I have received many calls about the issue in recent times and have experienced it myself as a frequent user of rail services.

Recently the Sligo-Boyle-Dublin route has improved with the addition of an extra evening service. We also have an additional later service whereby the Dublin to Sligo service was ex-

tended by one hour from 6 p.m. to 7 p.m. We must apply those lessons to other routes, particularly in respect of the Roscommon-Westport route where the last train departs from Heuston Station at 6.15 p.m. A significant number of people use the service as a daily commute. The fact that the last train leaves so early can cause practical difficulties for many people. I say that because, according to the timetable for the Cork service, the last train departs from Heuston Station for Cork every evening at 9 p.m. We must take a proper look at the delivery of rail services to the west and the particular needs of working people. I have raised this on numerous occasions with the National Transport Authority and departmental officials. Along with the Judicial Appointments Commission Bill, can we invite the Minister, Deputy Ross, to the House-----

Senator David Norris: And do his job instead of fecking around with the judges.

Senator Maura Hopkins: ----- to address practical issues in rail services serving the west of Ireland.

Senator Terry Leyden: I join the Leader of the Opposition, Senator Ardagh, in congratulating the IRFU and the Irish rugby team on the fantastic victory last Saturday night against the All Blacks of New Zealand. It was a great night for Ireland and for rugby. It is regrettable that we did not pursue the Rugby World Cup.

Senator Jerry Buttimer: We did pursue it.

Senator Terry Leyden: We should have got it. Nevertheless, we must congratulate the Minister, Deputy Ross, on the success of the team.

Senator Máire Devine: Well done, Minister Ross.

Senator Terry Leyden: Congratulations and well done. We will never look back.

Senator Ardagh referred to crime, gangland violence and the need for more gardaí on the beat. That is all very commendable, but gardaí are facing major challenges with the crimes and assassinations that are happening. Dublin is a very dangerous city at present due to the operations taking place and the number of assassinations by the Kinahan and Hutch gangs. Last night, I watched “Crimecall” on RTÉ, which is an excellent programme. I commend Sharon Ní Bheoláin and the gardaí from Harcourt Square who are involved. It should be on more often. The programme started in 1964 as “Garda Patrol”. People who had televisions at the time will remember it. In the 1990s, it was revamped as “Crimeline” and it is known as “Crimecall” since 2004. It is only shown about once a month. It is produced by Green Inc. Film & Television Ltd. and 360 Production Ltd. I commend them on the presentation. I also commend the contribution of the Garda Síochána.

Many people were identified last night stealing and committing crimes in Dublin. In Wicklow, two people were attacked on a lonely road, their car was stolen and they were robbed. The programme covers the country. It is not just reserved for Dublin. When it shows the films, people ring in to say they know the person. It is a great contribution and Virgin Media Television should broadcast something similar. I presume it is online but when new information arrives, it should be put on Facebook or Twitter. If new people are shown robbing and burning shops and robbing filling stations, let them be exposed online, identified and brought to justice. Senator Ardagh knows the Dublin situation. There is a need for more gardaí on the beat and also for armed gardaí in Dublin. They take a very big risk. They are very courageous and I wish them well.

Senator Colm Burke: The figures are available for the third quarter of the year and they show that year-on-year employment increased by 3.4%. There is an increase of 14% overall, year-on-year, in the number of people working in the construction sector. It is evidence that the building of residential accommodation continues to increase. Approximately 20,000 new houses will be completed by the end of this year. The long-term target is 30,000 to 35,000 per annum and, hopefully, we will reach that target in the next 12 months. I refer to Senator McDowell's comments on inspections and the fact that bedsits have been eliminated under legislation. In fact, somebody called to me recently and told me that 12 people living in a property in Cork have been given notice to leave by the end of February. Unfortunately, all 12 of them will find it difficult to get accommodation, and it is a major challenge for the local authority to provide alternative accommodation. I am not clear about the issues in Dublin, but my experience in Cork is that the fire authority and the Health and Safety Authority, HSA, are inspecting buildings in the Cork region. When 30 beds appeared in one property over a short period, the fire officer went in and had the place closed down. I congratulate the fire officer for being vigilant and making sure all the safety measures relating to residential accommodation are upheld. I accept that we need to look at this issue. Many people who were in bedsits are now out of the property market and are finding it difficult to source alternative accommodation. We need to review how we can deal with people who want to live on their own. More than 1,800 single or separated people are on the Cork City Council waiting list.

Senator David Norris: They are always at the bottom of the list.

Senator Colm Burke: They want to get replacement accommodation but are finding it difficult. This needs to be examined.

Senator David Norris: Hear, hear.

Senator Colm Burke: We need to deal with it in a short time period.

Senator Rónán Mullen: I have spoken numerous times recently on the use and abuse of the referendum process, particularly by this Government. It is now the weapon of choice for all kinds of populist proposals, or for providing cover or distraction from other controversies or Government failures. Apart from the recent abortion and blasphemy referendums, there is talk of the constitutional protection of women who choose to remain in the home being challenged by the Government in a referendum. I am sure the proposed referendum on the unified patent court will set the minds of the electorate ablaze with enthusiasm. A referendum on directly elected mayors is on the agenda.

Senator Colm Burke: That is democracy.

Senator Rónán Mullen: It has been suggested that there could be a third referendum on divorce. There is a proposal for Irish people living abroad to be allowed to vote in presidential elections. The idea that we should have a referendum on public ownership of water is a nonsense populist proposal that has been acceded to by the Government to dampen the flames of the Irish Water fiasco.

Senator Jerry Buttimer: The Senator is a bit of a populist himself.

Senator Rónán Mullen: The list seems to go on and on.

Senator David Norris: The Senator has forgotten the referendum on marriage equality.

Senator Rónán Mullen: The Minister of State at the Department of Finance, Deputy D’Arcy, seems to have added another referendum to this list. Last week, he made a direct threat against the Judiciary when he warned that the Government might hold a referendum to curb its discretion in respect of personal injury awards and, specifically, whiplash awards. This raises a number of issues. As we know well in this House, having been subjected to the Judicial Appointments Commission Bill 2017, about which others spoke earlier, the Judiciary is often fair game for populist attacks. It is disappointing that the Minister of State, who is a former Member of this House, is jumping on the bandwagon. I am concerned that he may have done so at the behest of the Government and not as a solo run. How would such a referendum be crafted or worded? It seems to me that it would be impossible to achieve his aim without making a more general encroachment on the independence of the Judiciary, which would be a seriously wrong step to take. It seems to me that the aim of restricting the level of awards could be relatively easily dealt with in legislation. We need to be careful when we discuss whiplash because we risk penalising or stigmatising those who have genuine personal injury claims. The use of phrases like Ireland being the “whiplash capital of Europe” suggests that all whiplash claims are false or fraudulent but this is clearly not the case.

Senator David Norris: Many of them are.

Senator Rónán Mullen: We cannot afford to make any changes in this area which might affect those who suffer as a result of genuine injuries. The best way to deal with false insurance claims is to encourage and assist insurance companies to probe and defend rigorously those claims they believe to be suspect.

Senator David Norris: Hear, hear.

Senator Rónán Mullen: A recent High Court case pertaining to a serious attempt at insurance fraud, which involved a number of individuals, was successfully defended by the insurance company through rigorous investigation and strong legal defence. That is the way to go. The courts system can work. We need to find ways of assisting it, rather than resorting to draconian and populist measures, which is a mania at this time.

Senator Jennifer Murnane O’Connor: Last month in Kilkenny, some very excited youngsters were invited to rob a bank, which they did to the tune of a cool €31 million. Before anyone panics, it was a virtual bank. This took place as part of the 2018 CoderDojo conference, which took place over a weekend.

Senator David Norris: Was it the Sinn Féin conference?

Senator Jennifer Murnane O’Connor: Children as young as five learned to code and listened as spacewoman, Norah Patten, an aeronautical engineer who hopes to be the first Irish female astronaut to fly to the moon, said that if something seems impossible, that does not mean one should not try. Learning to rob a bank in the virtual world taught these children about privacy, passwords, consequences and teamwork. Local children and children from all over the world participated in this event. They were joined by thousands of coders, parents, students and volunteers, who came together to promote this global movement and the message that technology has benefits for children and for inclusion. There is a strong need in industry in Ireland for better computer science skills and higher numbers of graduates but despite the presence of high-tech multinationals, there is no computer science education in second level and as a result there is a shortage in the high-tech sector of applicants with advanced skills.

Learning data and computer languages are like learning a foreign language in that the younger one starts, the better. This is one reason the Government's only initiative, a capitation top up to third level institutions for each computer science graduate it churns out, has been a failure. This is because it is so much harder to take up computational learning at a late stage. The low supply of computer science graduates has led to significant wage inflation in the sector which has a particular negative effect on our homegrown tech sector. The high salaries offered to computer science graduates cannot be matched-----

An Cathaoirleach: Does the Senator have a question for the Leader?

Senator Jennifer Murnane O'Connor: This is just about-----

An Cathaoirleach: It is not appropriate to come in and read a long statement. On the Order of Business, Senators raise a question. If the Senator wants to frame this issue into a question, I will allow her to do so.

Senator Jennifer Murnane O'Connor: It is very strange the Cathaoirleach only asked this of me and did not address anybody else-----

An Cathaoirleach: No. Most Senators who raise issues ask-----

Senator Jennifer Murnane O'Connor: Excuse me, I highlighted a lack of computer-----

An Cathaoirleach: Please respect the Chair.

Senator Jennifer Murnane O'Connor: I do.

An Cathaoirleach: On the Order of Business, most Senators ask the Leader for a debate or ask a question. It is not appropriate for the Senator to come in and read out a statement and I have been in this House in various capacities for much longer than the Senator has.

Senator Jennifer Murnane O'Connor: Excuse me but the Cathaoirleach was not listening to me. I asked about second level and computer skills-----

An Cathaoirleach: If she did, I did not hear the question

Senator Jennifer Murnane O'Connor: -----and the fact they are taught in England but not here so we need to promote children-----

An Cathaoirleach: So the Senator is calling for a debate on it.

Senator Jennifer Murnane O'Connor: Yes I am. I said that in my contribution if the Cathaoirleach had only listened to it.

An Cathaoirleach: I did not hear it. I am just trying to be fair to Members.

Senator Jennifer Murnane O'Connor: No, the Cathaoirleach was not being fair.

Senator Michelle Mulherin: I raise the serious plight and situation small beef farmers find themselves in. Two factories are selling beef below the cost of production and things are getting worse. There is a glut of cattle in the market, which could be down, in part, to some of the dairy herd being sold for meat. Last week alone there was a record approximately 40,000 animals slaughtered and yet compared to this time last year, beef is down approximately 30 cent per kilo. This time last year a farmer was getting €4.05 per kilo but now it is €3.75 per kilo.

Farmers facing into Christmas would be hoping for a boost but this has not materialised. We all welcome that in the budget the Minister for Agriculture, Food and the Marine recognised the pressure the suckler cow farmer is under and the pressure on beef production and introduced the beef environmental efficiency pilot scheme, giving it €20 million along with providing €23 million to the areas of natural constraint, ANC, scheme, which all helps these small farmers.

However, they are in a bind. Teagasc figures show that it costs €800 to keep a suckler cow for the year and yet some farmers are only getting €700 for a weanling at the factory. There is a serious problem here-----

An Cathaoirleach: Is the Senator calling for a debate?

Senator Michelle Mulherin: Yes, I am. Some of these farmers will go to the wall. I ask for the Minister to come in here to have a debate on the matter. I know it is not within his gift to decide on the prices the factories pay to farmers but it has all the appearances of a concerted practice when practically every factory in the country is offering the same price per kilo. The Minister needs to put pressure on these factories because he is out there winning markets abroad for them. We sell food into 180 markets. Much work is carried out by the Minister, his officials and Bord Bia to win these markets and if these farmers go, there will be no beef production system whatsoever. Something has to be done.

I highlight the fact that the beef forum, as it stands, is up in the air. This provides an opportunity for the Minister to sit around the table with the farming organisations and the meat factories to sort out these issues. We urgently need the Minister to come into the House because this is moving in totally the wrong direction for these farmers. It is not sustainable that anybody would keep selling below the cost of production and remain in business.

Senator Fintan Warfield: The Children and Family Relationships Act 2015 was signed into law in 2015. It complemented the referendum for marriage equality and gave rights to same sex parents so that their family formation would be recognised and protected. Some three and a half years on, children of same sex couples are growing up but there is still only one parent allowed on their birth certificate, leaving the other parent without any legal rights-----

Senator David Norris: Hear, hear.

Senator Fintan Warfield: -----over their child. Senator Mullen failed to mention marriage equality in his contribution.

Senator Rónán Mullen: Would the Senator describe that as a populist referendum?

Senator Fintan Warfield: This is the type-----

Senator David Norris: It was very popular indeed.

Senator Rónán Mullen: I asked would the Senator describe it as a populist referendum.

Senator David Norris: Senator Mullen was behind the hedge-----

Senator Rónán Mullen: I was making a correction.

An Cathaoirleach: Senators please, we are long over time. I have threatened before. This ruaille buaille and interruption is unfair. Senator Norris should know that.

Senator James Reilly: He is the worst offender in the House.

An Cathaoirleach: He should allow Senator Warfield to continue. This has been one of the most disorderly sessions since I became Cathaoirleach. There is chatting on both sides of the House.

Senator David Norris: I am not chatting.

An Cathaoirleach: The Senator is making several interruptions and he should please be quiet. That is another minute gone. The Leader will be under pressure to conclude before 4.45 p.m.

Senator Fintan Warfield: This is the type of policy that would make Senator Mullen proud. During the debate on the amendment Bill in this House this year, the Minister for Health promised families that those Parts would be commenced by October. Anxiety among families is growing. It has steadily increased every time the Department has missed its deadlines and there have been six missed in total. In the most recent response to a parliamentary question, the Department of Health is indicating that it may amend Part 9 prior to commencement, yet another likely delay of rights that should have been afforded years ago.

The Leader must make time available next week for one of the Ministers for Health, Justice and Equality or Employment Affairs and Social Protection to come to the Seanad and provide us with an update. Enough is enough. Given the delays and missed deadlines it is time for a bit of honesty and transparency from Government. I am sick of it, others are sick of it and most certainly the affected families are sick of it.

Senator James Reilly: I will try to keep my comments short and succinct and I hope without interruption.

Senator David Norris: Fat chance.

Senator James Reilly: Indeed. I remind the Senator from Roscommon that the Government made a very strong bid, led by Hugo MacNeill and others, for the World Cup and was in the last three but did not succeed on this occasion. I congratulate the Irish Rugby and Football Union, IRFU, and the Irish rugby team on their fantastic win the other night. They have lifted the nation.

Referenda are the right of the people and there might be certain elements in this House who would like to keep the people in the dark and deprive them of a voice but I would not count myself among those.

Senator Paul Coughlan: Hear, hear.

Senator Rónán Mullen: The high moral ground suits the Senator.

Senator James Reilly: I missed that because, thankfully, the acoustics here are not as good as they might be.

Balbriggan is a town of 25,000 people that has wonderful natural amenities and a public consultation will be launched next Monday in respect of a regeneration programme to which the public is invited. The plan is to spend over €22 million. It is an opportunity for the people of Balbriggan to have an input into the future of their town, our town, of Balbriggan with its

wonderful coastline, beach, train station, access to the M1, etc. It is a very exciting plan and one that will hugely enhance the town but it can only be improved by more local input. I hope as many people as possible will go to that between 6 p.m. and 7 p.m. next Monday in Balbriggan.

I also encourage Fingal County Council to make an application under the greenway scheme for the greenway from Malahide and Portmarnock all the way to Balbriggan. We have a fantastic coastline, six railway stations and the airport is beside us. It would be a wonderful amenity for the people of Dublin to be able to walk and cycle in safety. We all know our roads are not safe for families to go out cycling on, even in north county Dublin where many people enjoy the environment and the hills. Many cyclists tell me that is what it is all about. Will the Leader please ask the Minister for Transport, Tourism and Sport to come to the House to have a debate on greenways and their health, well-being, tourism and economic advantages, and their benefit to the nation generally?

Senator Robbie Gallagher: Today is International Children's Day and it acts as yet another timely reminder of the importance of looking after our young people as we know they are the future of our country. Unfortunately, the children of 2018 face many more challenges than we faced in our daily lives when we were that age. I welcome the new anti-bullying programme that was launched today in four schools in County Monaghan and four schools in County Louth. The programme was drafted and drawn up in Finland and is an internationally-recognised early intervention anti-bullying programme that is being rolled out in many parts of Europe at present. I acknowledge the great work being done by many teachers the length and breadth of this country in respect of bullying in schools and I hope this initiative will help them in their good work.

There was a survey done recently on the 1,600 students who attend the eight schools in question. It found that 23% of the student population was being bullied two to three times a month and sometimes even more. That is a very worrying trend. Years ago, bullying was confined to the schoolyard but, unfortunately, today we live in the world of cyber-bullying and we have to be very cognisant of that. I sincerely hope this new initiative will instil a greater sense of awareness among the pupils and help stamp out the curse of bullying. I ask the Leader to impress upon the Minister for Education and Skills the importance of rolling this initiative out in primary schools countrywide as soon as possible. Unfortunately, only eight schools are being looked after this year. Bullying is a serious problem affecting our children, sometimes with serious consequences.

An Cathaoirleach: The Leader to respond.

Senator Michael McDowell: Perhaps either the Cathaoirleach or the Leader will explain this. Am I correct in interpreting the Order of Business as meaning that the debate on the Judicial Appointments Commission Bill will end two hours after it commences?

Senator Jerry Buttimer: That is correct.

Senator Michael McDowell: I thank the Leader. I just wanted to be sure about that.

Senator Jerry Buttimer: I thank the 20 Members of the House for their contributions. On a point of information for Senator McDowell, it is two hours after the debate commences. I join Members of the House in congratulating the Irish rugby team on its magnificent victory last Saturday night. I am glad they are following Munster's lead in winning on Irish soil. I also join with the House in congratulating Vicky Phelan on her well-deserved accolade over the

weekend.

Senator Ardagh raised five matters at the beginning of the Order of Business. I remind her that the Government is committed to tackling the issue of crime. In particular, I highlight the provision of €95 million in overtime to An Garda Síochána, 800 new gardaí along with the appointment of additional civilian staff, and the reopening of Templemore. The number of gardaí operating will be 14,000, the highest in a decade, along with a budget of €1.76 billion, an increase of €100 million in budget 2018. There is also the €10 million for new cars and €7 million for a Garda building programme, not to mention the reform of An Garda Síochána. To those on the opposite side who talk about An Garda Síochána, let us put the facts out there in terms of the numbers, investment, personnel, capital investment, new equipment and Garda cars. The Senator is right that visibility is important and that is why the Garda is embarking upon a new model of community policing which will be unfurled in the next couple of weeks.

Senators Ardagh, McDowell and Colm Burke raised the issue of housing. We will have the Minister come to the House in the coming weeks to have another debate on housing. I concur completely with Senator McDowell on the issue he raises in respect of bedsits, but also on the right of inspection. The Minister, Deputy Eoghan Murphy, is publishing legislation in the new year which will enhance the powers of the Private Residential Tenancies Board in terms of inspection along with an increase in the resources allocated for the tenancies board. On the issue of sanction being given to take on bogus landlords, I agree there is a need for more vigilance. Some of the conditions are appalling and unacceptable and we should condemn them unreservedly.

One of Senator Ardagh's colleagues raised the issue of An Bord Pleanála last week. There has been a significant number of applications to An Bord Pleanála, and they are up by 19%. The Minister for Housing, Planning and Local Government, Deputy Eoghan Murphy, is committed to putting in more resources and we all want decisions to be made in a more timely way as it is more beneficial for local authorities, for landowners and for homeowners. I would be very happy for the Minister to come to the House for a discussion on the matter the Senator raised. If we were to follow the policies of Fianna Fáil in government we would now be looking at ghost estates, which this Government and that which preceded it have got rid of.

Senator Conway-Walsh referred to planning. I would be happy for the Minister to come to the House. I join Senator Higgins in congratulating all serving and former Members for their participation in *Votáil 100*, which is a credit to all involved. In particular, I pay tribute to our female colleagues, Senators McFadden, Bacik, Ardagh and Higgins, for the way this House has commemorated the event in such a proactive way. I thank them most sincerely.

Senator Higgins made some important comments on the national road safety day. We remember, pay tribute to and thank the Garda Síochána first responders for their work on our roads. I also pay tribute to those who have died tragically on the roads. It is important to highlight the fact that our roads are not battlegrounds but are a shared space.

Today is World Children's Day, as Senator Higgins also mentioned. The State has a duty of care to all our children and that is why the Proclamation states that we cherish all our children equally. This and the last Government have brought forward 30 pieces of legislation to change the lives of young people for the better. Senator Mullen forgot to mention the children's rights referendum and what was an important change to the Constitution. I would be happy to have a debate on children in due course.

Senator Nash asked about the review of the flat-rate tax relief, which is being carried out by Revenue. There was a piecemeal approach to the issue and, outside flat-rate expenses, all employees retain the right to claim expenses they incur which are not reimbursed by their employers. We will have a debate when the review comes back. Senator Ned O'Sullivan raised the issue of health and safety in hotels - specifically in the context of baths and showers - which is a very important point. I would be happy for the Minister to come to the House to discuss health and safety. The point the Senator made in respect of new-builds is also important.

I would be happy for the Minister of State at the Department of Jobs, Enterprise and Innovation, Deputy John Halligan, to come to the House to discuss apprenticeships, as requested by Senator Boyhan.

Senator Butler raised the issue of health and respite care. He also referred to accident services in his own constituency but he may be better putting in a Commencement matter on that subject.

Senator Devine referred to the Stardust families, for whom all of us have great sympathy. We remember very vividly the day when so many young people were tragically killed. The Government commissioned a report by Mr. Justice McCartan, which, I know, does not provide the outcome for which the families were looking. The Taoiseach made it clear in the Dáil today that there will be no moving away from that. However, I would be happy to talk with the Senator again on the matter. Tabling a Commencement matter may be the way forward. All of us have sympathy for, and empathy with, the families in this case. The Government accepted the McCartan report. Mr. Justice McCartan's name was one of those put forward by the families in the context of leading the inquiry.

Senator Norris referred to the editorial in *The Irish Times* on the Judicial Appointments Commission Bill 2017. What the editorial did not mention, but perhaps should have, was the histrionic behaviour of some, the filibustering by a few, the hyperbole of a couple, the repetition by many-----

Senator David Norris: Nonsense.

Senator Jerry Buttimer: -----the childish games being played by some, the time-wasting and the lack of enlightenment on the part of a number of others. However, we will be continuing the debate.

Senator David Norris: Nonsense. What the Leader is saying is tripe.

Senator Jerry Buttimer: We will be continuing the debate later and I am sure we will have further hyperbole, heat and little enlightenment from some Members of the House regarding it.

Senator David Norris: Give us some examples of the hyperbole. Does the Leader know what the word means?

An Cathaoirleach: Allow the Leader to conclude.

Senator David Norris: I doubt he knows what it means.

Senator Jerry Buttimer: I do not descend to the Senator's level of ridicule but the behaviour of some Members in the debate on the Judicial Appointments Commission Bill-----

Senator David Norris: Has been exemplary.

An Cathaoirleach: The Leader should not invite debate.

Senator David Norris: We have used every parliamentary tactic that is perfectly legitimate. The Leader just does not like it.

Senator Jerry Buttimer: It does not bother me.

Senator David Norris: It seems to have got under his skin.

An Cathaoirleach: Please, Senator Norris.

Senator Jerry Buttimer: I am well able to give and take-----

Senator Terry Leyden: That is for sure.

Senator Jerry Buttimer: -----and I do not mind that.

An Cathaoirleach: If the Leader is having a discussion he should address his remarks through the Chair.

Senator Jerry Buttimer: Members should realise that we are entering into the 42nd or 43rd hour of debate on the Judicial Appointments Commission Bill, much of which has been repetitious-----

Senator David Norris: A lot of it has not been.

Senator Jerry Buttimer: Much of it has been repetitive.

Senator David Norris: The Leader has not been here for most of it, so how would he know.

Senator Jerry Buttimer: I do not like the personalisation of attacks on Members of the House-----

Senator David Norris: Well, stop it then.

Senator Jerry Buttimer: I have attacked nobody.

Senator David Norris: You have.

An Cathaoirleach: Please, Senator Norris.

Senator Jerry Buttimer: Senator Hopkins raised the important issue of the western rail corridor and, in particular, the Westport to Roscommon train service. I would be happy to arrange for the Minister to come to the House to address that issue.

I must apologise to Senator Leyden as I did not catch all his contribution apart from what he said about the Rugby World Cup bid, of which the Government was very supportive and into which it put a great deal of time and effort.

Senator Terry Leyden: They will have to improve the quality of the microphones. I basically complimented Senator Ardagh on raising the issue of crime.

Senator Jerry Buttimer: I replied to the matter raised by Senator Ardagh, which Senator

Leyden might recall.

Senator Terry Leyden: -----and the need for-----

Senator Jerry Buttimer: I referred to the recruitment of more gardaí and the allocation of more resources.

Senator Terry Leyden: I spoke about “Crimecall” and work being done in RTÉ to bring-----

Senator Jennifer Murnane O’Connor: The Senator is lucky in that he was able to raise two issues. Most of us are only allowed to raise one.

Senator Jerry Buttimer: Senator Colm Burke raised the issue of employment. We all welcome the fact we are nearing full employment in the economy.

Senator James Reilly: Hear, hear.

Senator Jerry Buttimer: In particular, we welcome the fact that more people are back working in the construction sector.

An Cathaoirleach: Is there somebody speaking on a phone in the Chamber?

Senator Máire Devine: There is, yes.

An Cathaoirleach: Senator Norris, I can hear you clearly. Allow the Leader to continue.

Senator Jerry Buttimer: Senator Mullen, being a profound scholar, should recognise that the essence of our democracy is that the people decide on whether to accept, amend or reject constitutional referenda. That is a fundamental part of our democracy. It is important the Minister of State, Deputy D’Arcy, is allowed to put forward his viewpoint regarding personal injuries awards and if a referendum on it is required, the Government will approve it.

Senator Murnane O’Connor raised the issue of computer science-----

Senator Jennifer Murnane O’Connor: In secondary education.

Senator Jerry Buttimer: Yes.

Senator Jennifer Murnane O’Connor: I did not get to finish my point on it.

Senator Jerry Buttimer: The Senator should do a bit of research before she comes into the House to make contributions because-----

An Cathaoirleach: The Leader should address his comments through the Chair.

Senator Jerry Buttimer: The then Minister, Deputy Bruton, in February of last year announced the creation of a new leaving certificate curriculum with the inclusion of computer science as a subject to be introduced in 2018. That has come in, with all schools to take it up in 2020.

Senator Jennifer Murnane O’Connor: In 2020. Therefore, it has not come in yet.

Senator Jerry Buttimer: With all schools to take it up in 2020. The Senator needs to

be-----

Senator Jennifer Murnane O'Connor: I am right.

Senator Jerry Buttimer: The Senator is not right.

Senator Jennifer Murnane O'Connor: I am.

Senator Jerry Buttimer: She is not. I draw the Senator's attention to the fact that Professor Brendan Tangney and the then Minister spoke at the launch and it has been a school subject since September of this year. The Senator should not come in and say that nothing is happening. That is what causes people to get annoyed with politicians. Credit should be given to the former Minister for Education, Deputy Bruton, for starting the digital revolution. Let us get the facts right. That is a subject in schools and computer education has been part of our school curriculum for a while. The former Minister of State in the Department of Education and Skills, Deputy Cannon, set up the CoderDojo programme. I would be happy to arrange for the Minister for Education and Skills to come into the House to explain to the Senator what is happening in the science area, including in computer science, in our schools.

Senator Mulherin raised the issue of small beef farmers and I would be happy to arrange a debate on beef production in the coming weeks.

I share Senator Warfield's frustration and annoyance regarding the failure to commence sections of the Children and Family Relationships Act. The delay in doing so has been too long. I concur fully with him on that. It needs to be enacted quickly. The Senator will find no harbour for delaying doing that on this side of House. It is unacceptable.

Senator Reilly raised the issue of greenways around Fingal and spoke about the need to invite the Minister to the House. I would be happy to have that debate take place.

Senator Gallagher raised the issue of bullying. Addressing that is an important part of our school policy. The former Ministers, Ruairí Quinn and Deputy Richard Bruton, continued the rolling out of the anti-bullying curriculum. It is an issue on which we need to see further work done. The Senator is right to highlight the issue of cyberbullying also.

Order of Business agreed to.

Health Insurance (Amendment) Bill 2018: Order for Second Stage

Bill entitled an Act to amend the Health Insurance Act 1994 to specify the amount of premium to be paid from the Risk Equalisation Fund in respect of certain classes of insured persons from 1 April 2019; to make certain other amendments to that Act; to amend the Voluntary Health Insurance (Amendment) Act 1996 to vary the basis on which persons are appointed to be members of the Voluntary Health Insurance Board; to amend the Voluntary Health Insurance (Amendment) Act 1998 to enable the Voluntary Health Insurance Board to act as an insurer in addition to acting as an agent in respect of the provision of health insurance cover pursuant to an international healthcare plan; to make a consequential amendment to the Stamp Duties Consolidation Act 1999; and to provide for related matters.

20 November 2018

Senator Jerry Buttimer: I move: “That Second Stage be taken now.”

Question put and agreed to.

Health Insurance (Amendment) Bill 2018: Second Stage

Question proposed: “That the Bill be now read a Second Time.”

An Leas-Chathaoirleach: I welcome the Minister of State, Deputy Finian McGrath, to the House.

Minister of State at the Department of Health (Deputy Finian McGrath): I thank the Leas-Chathaoirleach. It is great to be back in the Seanad.

I am pleased to have this opportunity to address the House on Second Stage of the Health Insurance (Amendment) Bill 2018. This is a short and technical Bill comprising eight sections all focused on the specific issue of health insurance. The amendments outlined in the Bill will ensure the ongoing sustainability of the private health insurance market and seek to keep health insurance policies at an affordable price for all citizens - young or old, sick or healthy.

Health insurance in Ireland is provided according to four principles: open enrolment, lifetime cover, minimum benefit and community rating. Open enrolment means that insurers in Ireland cannot refuse to provide cover to someone who might be a risky customer for them, and there are maximum waiting periods for pre-existing conditions. Lifetime cover means that once a person has health insurance, an insurer cannot stop cover or refuse to renew their insurance, except in very limited circumstances such as fraud. Minimum benefit means that all insurance contracts must abide by regulations issued by the Minister for Health to make sure that everyone who holds health insurance has a minimum level of cover.

Perhaps the most important principle of health insurance in Ireland, and the principle which is the central focus of the Health Insurance Bill each year, is community rating. This has the greatest effect on affordability of health insurance for those who are most likely to need health insurance coverage. Community rating means that health insurers cannot alter their prices based on an individual’s current or potential health status. Instead, insurers set the price for each product according to their overall expected claims costs. This helps to keep health insurance affordable for older and sicker people, who might otherwise be priced out of the market.

Community rating is supported by providing cross-subsidies between insurers with different risk profiles. It is essentially a financial transfer mechanism whereby money flows from insurers with healthier members to insurers with sicker members. This is called risk equalisation and without it, an insurer with older and sicker members would be required to charge much higher premiums than their competitors to cover their claims costs.

Risk equalisation seeks to level the playing field and encourage insurers to compete on the services they can provide to their customers, rather than simply trying to attract younger people who are less likely to make health insurance claims. The risk equalisation scheme was introduced in Ireland in 2013. Under the scheme, credits are paid to all insurers for their older and sicker members. These credits are funded directly by stamp duty levies on all health insurance

contracts written. In effect, the scheme redistributes funds between insurers to meet some of the additional costs of insuring older and sicker members. None of the stamp duties on each health insurance contract goes to the Exchequer. They are all redistributed to compensate for the additional cost of insuring older or less healthy people. In 2017, the risk equalisation fund redistributed approximately €670 million in premiums out of a total of €2.5 billion in premiums paid. The scheme is carefully monitored to ensure that none of the insurers is overcompensated, which would contravene the scheme's approval under the EU state aid regulations. In this way, the cost of insurance is shared between all insured people and we can ensure sicker and older people retain access to affordable private health insurance.

Legislation is needed each year to update the amount of credits paid to insurers under the risk equalisation scheme and the amount of stamp duty levied on health insurance contracts to fund the credits. As part of the process, the independent market regulator, the Health Insurance Authority, carries out an evaluation of the market focused on the claims costs every insurer has paid over the year. Based on that analysis, the authority recommends the level of credits that should apply the next year. The Minister for Health has considered and accepted the recent recommendations made by the authority for the rates next year. I am pleased to announce that this year's Bill will provide for a general reduction in the credits across genders and age groups, and there will be no change in the stamp duty on the contracts. Maintaining stamp duty at the existing level should ensure the health insurers do not increase premiums and that contracts remain at an affordable price for all citizens.

In addition to the technical amendments, this year's Bill provides for a number of amendments to the Acts governing the Health Insurance Authority and the VHI. In short, it is proposed to expand the membership of the Health Insurance Authority board, to broaden the composition of the VHI board and to enable the VHI to set international healthcare plans directly. I will outline each of these proposed changes in turn.

The Health Insurance Authority was established in 2001, with a provision for five board members to be appointed. Since that time, the health insurance market has become more complex, with insurers adopting innovative marketing and product propositions to expand their client base and improve their risk profile. Further significant changes can be expected as the Sláintecare programme is implemented. The role of private health insurance in our health system could change significantly and the regulator must be able to react to its changing role and advise the Minister appropriately.

Public sector governance obligations have become more prescriptive. The 2016 code of practice for the governance of State bodies places much greater emphasis on accountability of State boards. For the objective and effective discharge of its functions, it is desirable that the authority include a broad mix of skills and experience, and expanding the membership of the board will ensure that it can deliver its strategy and address any challenges it meets.

The Bill contains two amendments to the Voluntary Health Insurance Acts, which comprise the governing legislation for the VHI. The first VHI-related amendment deals with board composition. Currently, the VHI board is restricted to having only two persons who are health service providers. The amendment is to remove this restriction, and it includes a new provision that the Minister will give due consideration to the mix of skills present in the VHI board when making appointments, thus ensuring the highest standards of governance.

The second amendment to the Voluntary Health Insurance Act deals with one specific area

of the VHI's business activities. The amendment will permit the VHI to sell international healthcare plans directly not only as an agent, as it is allowed to do currently, and it will remove the requirement for the VHI to seek ministerial approval before selling these plans. This development is consistent with the VHI's current status as an insurer authorised by the Central Bank. The VHI is competing in a highly competitive, regulated marketplace, and the amendment will remove the impediment to its ability to compete with its competitors and thereby allow it to avail itself of potentially significant business opportunities. I will now outline the specific provisions of the Bill.

Section 1 defines the principal Act as the Health Insurance Act 1994. Section 2 amends section 11C of the principal Act to provide for 1 April 2019 as the effective date for revised credits payable from the risk equalisation fund.

Section 3 amends Schedule 1 to the principal Act to provide for the expansion of the membership of the board of the Health Insurance Authority from five to seven, and to provide for an increase in the quorum from three to four.

Section 4 replaces table 2 in Schedule 4 to the principal Act with effect from 1 April 2019, whereby the applicable risk equalisation credits that are payable from the risk equalisation fund in respect of certain classes of insured persons are revised.

Section 5 amends section 4 of the Voluntary Health Insurance (Amendment) Act 1996 to provide for a change in the composition of the VHI board. It will remove the existing restriction on the number of healthcare providers on the VHI board, and includes a new provision that the Minister will give due consideration to the mix of skills present on the VHI board when making appointments, thus ensuring the highest standards of governance.

Section 6 amends section 1 of the Voluntary Health Insurance (Amendment) Act 1998 to amend the VHI's current function as solely an agent for the provision of international healthcare plans to permit the VHI to sell international plans directly without an intermediary. It will also remove the requirement for the VHI to seek ministerial approval before selling these plans.

Section 7 amends section 125A of the Stamp Duties Consolidation Act 1999 to specify the applicable stamp duty rates initially from 1 January 2019 to 31 March 2019, and thereafter from 1 April 2019.

Section 8 provides for the Short Title, commencements, collective citation and construction of the Bill.

As I said, the Bill allows the Department of Health to maintain its support for the core principle of community rating, which is a long-established and well-supported Government policy for the health insurance market. The amendments to the legislation governing the Health Insurance Authority and VHI are to allow these organisations to plan the future developments in this ever-changing and complex environment. I commend this Bill to the House.

Senator Catherine Ardagh: I welcome the Minister of State to the House. I am taking this matter on behalf of my colleague, Senator Swanick, who is a doctor.

The Bill is designed to support risk equalisation, which will mean our health insurance market will allow older citizens and people with illnesses to afford health insurance. Community rating ensures these people are not discriminated against in favour of younger, healthier people.

My party, Fianna Fáil, has always supported risk equalisation and community rating.

The main purpose of the Bill is to revise the number of risk equalisation credits to be paid in respect of age, gender and level of cover from 1 April 2019 as required annually. It will amend the Stamp Duties Consolidation Act 1999 to revise the community rating stamp duty levies required to fund these equalisation credits.

The Bill will make changes to the governance of the VHI. The board of the Health Insurance Authority will be increased from five to seven members and the quorum from three to four. It will amend section 4 of the Voluntary Health Insurance (Amendment) Act 1996 to provide for a change in the make-up of the VHI board, which removes the restriction on the number of healthcare providers on the VHI board and requires the Minister to give consideration to the mix of skills present on the VHI board when making appointments. It will also amend section 1 of the Voluntary Health Insurance (Amendment) Act 1998 to permit VHI to sell international plans directly without ministerial approval.

During the last Dáil, experts recommended the introduction of lifetime community rating, which seeks to address the inequity of people waiting until they are older to take out health insurance and paying the same as those who have been health insurance consumers for decades. From 2010 to the end of 2014, the number of people under the age of 60 with health insurance declined, while the number of those over the age of 60 increased. In the six-month period after the introduction of lifetime community rating in 2015, there was an increase of almost 56,000 in the number of people with health insurance. From mid-2017 to mid-2018, the market increased by approximately 48,000 and now stands just below what it was in December 2010.

My party's values support our older people and our sick. We genuinely value older people and the dignity of each person in his or her illness, medical condition or disability, which is why in government we decided on a comprehensive plan to support older and sick people who have private health insurance.

We are firm in our view that the principle of solidarity should apply in private health insurance as well as in public health services. More than 2 million people in Ireland have private health insurance cover, nearly 445,000 people are aged 60 years and lower. Many have paid for health insurance their entire adult lives. They have a fair expectation that the health insurance market will not be permitted to diminish their coverage. It is right for people to expect not to face higher health insurance prices because of their age or because of a particular medical condition. This country's policy has long been that the health insurance market should be community rated and people know this and rely on it.

5 o'clock

Senator Victor Boyhan: I thank the Minister of State, Deputy Finian McGrath, for coming to the House and for giving us a comprehensive review of the Health Insurance (Amendment) Bill 2018. I welcome the introduction of this Bill. Ordinarily it is an annual Bill that deals with the amount of risk equalisation credits to be paid from the risk equalisation fund in respect to age, gender and level of cover from 1 April 2019. Substantive changes are being sought to both the operation of the VHI and to the corporate governance of the Health Insurance Authority and I welcome the clarity with which the Minister of State set them out today. After years of surging health costs, we should pause to remember that Fine Gael has been in government for the past seven years and one of the big issues in its campaign during the previous election was this great promise of universal healthcare. It is a bit like the universal social charge, USC. When one googles the words "we will abolish USC", one finds them all over the place and yet

people come in and out of here as if there is no problem. Fine Gael also broke a promise that it would provide universal healthcare. Why do the public pay for private health insurance? What are they getting for it? Why are people waiting for years to get a health service? I am a proud member of the VHI. It is not a choice any more as I have to have health insurance. Most of us, if we can afford it, will pay for health insurance because one has to have it. I would like to spend my money on other things.

There was the great promise of universal healthcare, but suddenly the party walked away from it. Whenever the election is called, and I do not want to deviate from the discussion on the Bill, we will have to ask who broke the promises? Who spoke about the abolition of the USC? Who talked about universal healthcare? Who talked about no more people waiting months for cataract operations? Who talked about rehabilitation beds being opened for people who want essential rehabilitation? I am mindful of the only six beds designated for children at the National Rehabilitation Hospital in Dún Laoghaire being closed.

We have to talk about the VHI and private healthcare which is essential for people because they have no choice. We have to ask ourselves what we are doing about healthcare. Where are we in terms of a Republic that talks about equality of opportunity, supporting the vulnerable and enabling and assisting people who need critical care and home care packages? Somehow the private sector is doing one thing while the public sector is doing something else. We have to come together to provide proper decent healthcare for everybody. That is the challenge for people. I accept the potential of Sláintecare and the acceptance across the political divide it will be important as we go forward.

I do not want to be negative as I know the Minister of State, Deputy Finian McGrath, is a very positive person who gets things done. I acknowledge that he is very focused and does not get sidetracked. I know it is as frustrating for the Minister of State as it is for me and Members of the Seanad. Healthcare is going to be one of the big issues people in the public realm will have to stand over and be held accountable for. Whenever this election happens, the people will be ready and will demand accountability from the political masters who promised them they would fix the healthcare service, which is far from fixed.

After years of surging health insurance costs, I welcome the fact prices are finally beginning to level off. In the case of the VHI, its customers have seen cuts in their insurance premiums. Indeed, I received a cheque for €50 in the post, a rebate from VHI. I was thrilled. This move has forced others to follow. I understand Laya Healthcare and Irish Life Health have also reduced their premiums, with a typical family saving €270 a year. Competition is good in the health sector; it is good in every sector. I am glad to see people are tackling the cost of healthcare. That is important.

I was alarmed, however, to read recently that according to a survey by Dermot Goode of *totalhealthcover.ie* “older people are paying double what they need for health insurance” because of what he describes as their unwillingness to switch providers. Why are people unwilling to switch providers in the health insurance market? I know why. I switched a few years ago because I was saving some money but trying to get back into the VHI was another matter. There was a cost and I was not getting the same coverage. Older people who are not familiar with different companies chose to stay with the familiar, safe and predictable service. There are no policies where one can compare like with like.

I was a director of the National Treatment Purchase Fund, NTPF, for two terms and I know

more about private health cover than most and how the NTPF would negotiate with the private health sector as part of its remit to provide beds and services for patients who were classified as the longest on the waiting lists. That was the principle then, but it may have changed somewhat. The prices the NTPF can secure versus the cost of the procedures for those with private health cover are different. Casemix compares the cost of procedures in the context of the private and public sectors and it is worth looking at that but that is an issue for another forum. We need to be mindful of costs and value for money but ultimately it is about people's healthcare. We have to ask ourselves why are people unwilling to change. I suggest one of the reasons relates to simplification, plain English, plain speaking and comparing like with like. No two policies are the same and that is an issue we need to look at in the broader debate on private health cover. What service are people getting for the money they pay? Where can they see comparisons because no two policies are alike? The policies are deliberately designed by these private companies to be different so that one cannot compare like with like.

I welcome the Bill as it will increase the number of members on the board of the Health Insurance Authority. The view in the past few years has been that we should have tighter and small boards, be it in the private sector or the public sector. I think at last we are realising that small boards are not necessarily good boards and the smaller the board, the tighter the outfit is and sometimes one does not pick up some of the problems.

I was a member of another board, which I will not mention, that was the subject of great debate a few weeks ago. We are now seeing the company being wound down and a number of issues of concern being raised. I think the bigger and the more diverse the board membership is, the better for corporate governance *per se*. I welcome the fact the Minister is increasing the number of board members on the Health Insurance Authority. It is important that we ensure that the Health Insurance Authority promotes customer choice because this has to be the backbone of all this. Customer choice increases information so that young and older people are not paying above what they ought to be paying for the cover they need. Some policies are for cover way in excess of what people need. Again people cannot get independent information.

I look forward to the Minister of State's response and ask him to respond to two issues. The first is the rationale behind the VHI's coverage capacity internationally. On the face of it, I welcome it and think it is good, but what is the rationale for it? The second issue is the increase in number of board members of the Health Insurance Authority and the reasons for it. Some years ago before I became a Member of this House, the VHI was in dire straits but now it is a stronger and better organisation. It is leaner and keener and it is a great tribute to its chief executive, chairman and staff. The VHI is now at the cutting edge. It is very professional, very slick, keen and competitive and it is an organisation we should be justifiably proud of.

An Leas-Chathaoirleach: I thank Senator Boyhan. Senator Colm Burke has eight minutes.

Senator Colm Burke: I welcome the Minister of State to the House to deal with this matter. It is extremely important that there is risk equalisation. It is interesting that the Bill provides for risk equalisation for all persons regardless of age. For example, €3,300 per annum is paid from the fund to support a male aged 80 years or over with private health insurance. In the case of a female aged between 80 and 85 years, it is €2,475, and the contribution from the fund for a male over 85 years is €4,600. People of that age cannot afford that amount to pay for private health insurance but that is what they would have to pay for it. It would be beyond their reach and, therefore, the Bill is important. It is about giving equal treatment to everybody, regardless of age, with regard to the cost of private healthcare.

In fairness to the insurance companies in the market, all of them provide a good service. It is interesting that the number of people who pay for private health insurance has increased. We should also consider the contribution insurance makes. With regard to the HSE, approximately 3.2 million outpatients are seen in our hospitals per annum. That equates to between 63,000 and 64,000 per week. In addition, I may be off in my figures but to give an idea of the level of input from private health insurance, more than 2,000 consultants provide healthcare on their own premises. If they see an average of 20 people per week, that means there are a further 2 million attendances for healthcare. It would not be possible for the HSE to provide that unless there was a significant increase in the number of medical staff across the HSE.

As regards increasing the number of medical staff, it is important to be careful about how we fund healthcare and ensure we get value for money. I have concerns in that regard. Last week at a health committee meeting, I received figures on HSE employment. I note that the number of people employed has increased by 13,460 in the four years since December 2014. My concern relates to administration and management where the number has increased from 15,100 to 18,100. I have expressed my views on that issue previously. That is an increase of 3,000 in the number of people in administration and management. Likewise, in hospitals, the number of nurse managers has increased by 1,100 from 6,600 to 7,700. Additional staff are being provided but the question is whether we are using staff time and the work they do in an efficient manner. Can the increase in staff continue to be permitted without seeing a return in respect of the numbers going through the hospital service? We must be careful about that.

I agree with colleagues regarding the VHI board. Many complex issues arise for the board, ranging from the employment of staff to dealing with outside people across the healthcare sector whom the VHI board pays every day. It is important, therefore, that there is a range of expertise on the board, such as on legal matters, accountancy and cost effectiveness. The number on the board should be increased from five to seven. We must ensure we have a board that has the necessary skills to deal with management and the important decisions that are required to provide an efficient board. There must be value for money in the service it provides in respect of the care it is prepared to pay for and in the management of money. The VHI is not a for-profit organisation but it must collect a sufficient premia to discharge the claims that are made. It is important that there is efficiency through having a good board. My colleagues referred to how the VHI has changed over the past few years. They are welcome changes and long may they continue.

I welcome the Bill. It is important to retain risk equalisation and ensure that all parties are treated in an equal manner. That is what the Bill is about. Whether somebody is aged 18 or 80, he or she should be able to afford private health insurance if the person deems it necessary for his or her healthcare into the future.

Senator Máire Devine: I welcome the Minister of State, Deputy Finian McGrath. I wish to respond to a point made by Senator Colm Burke regarding the increase in the number of nursing staff managers by 1,000. That does not reflect an overall increase in the total number of staff. There are 2,700 nursing staff vacancies today. That was done to retain people by giving them a promotion but it is not an increase of 1,000 staff.

Senator Colm Burke: For clarification, the number of staff who are nursing managers-----

An Leas-Chathaoirleach: There is no clarification allowed. It is a point of order.

Senator Colm Burke: On a point of order, the number of nurse managers has increased from 6,600 to 7,700.

An Leas-Chathaoirleach: That is not a point of order.

Senator Máire Devine: That does not count in the mathematics.

Senator Colm Burke: That is an increase.

Senator Máire Devine: No, it is an increase in the number of nurse managers but not an increase in the number of staff.

An Leas-Chathaoirleach: The Senators make their contributions through the Chair.

Senator Colm Burke: The number for the increase in nursing staff is 2,700.

Senator Máire Devine: No, it is not.

Senator Colm Burke: Yes, it is. The Senator should check the figures.

An Leas-Chathaoirleach: The Senators should not be talking to each other across the floor. Senator Devine, without interruption.

Senator Máire Devine: I had to make that point because it is a fudge.

Senator Colm Burke: It is not a fudge. It is an increase of 2,700 in nursing staff in four years.

Senator Victor Boyhan: We should not delay the Minister for Justice and Equality, Deputy Flanagan.

Senator David Norris: We must have the Judicial Appointments Commission Bill 2017.

An Leas-Chathaoirleach: Please, I cannot have all Senator contributing. There should be one speaker at a time and every Member will get a turn. Senator Devine has the floor and there should be no more interruptions.

Senator Máire Devine: The main deficiency in our healthcare system is the absence of universal healthcare. I support Senator Boyhan raising this in the debate. Sinn Féin repeatedly raises the inherent inequality in our health system during these debates every year and each year the inherent inequality has been allowed to flourish. Rather than navigating a way out of reliance on a two-tier system, it appears that oxygen has been given to the private sector at the expense of vital investment in public health services. This Bill is a prime example of that.

Insurance premium income in 2017 was €2.66 billion and premiums per person rose by an average of 3.7% in that year. The number of insured people at the end of 2017 was 45% of the population. That number had gone down following the economic crash and is now climbing again. Last Friday I took a friend to the hospital. There was not even standing room in the emergency department. This person did not have health insurance but has vowed to get it this week. It is not a choice but something that is imposed. People will scrimp and save for it when they see no standing room in an emergency department.

Some 21% of people over 60 years of age have private health insurance. It is a fair assumption that healthcare needs increase as people get older, but it is also fair to argue that most young

and middle aged people simply cannot afford health insurance. In summary, we are discussing middle Ireland, the people who can just about scrape enough together to pay for health insurance out of fear or those who cannot afford the payments. However, what aspect of insurance is fair? By its nature it is making a profit from the suffering of others. However, as far as I can see, this Bill every year, year in year out, is about taking the risk away from insurance companies. I know it is aimed to be Exchequer neutral but then why are we involved? Why are we discussing and meddling in the private sector? It is because our public health system is in a state of emergency.

Last year we tabled an amendment that would require the Department to produce a report on the impact of this legislation, specifically to address concerns that insurance companies would use this legislation to sneakily hike up their premiums. The Government rejected this amendment, leading to ongoing protection of private companies from scrutiny because they are propping up our failed health system.

Twice a year the Health Insurance Authority issues a report to the Minister on its evaluation and analysis of these returns. The second report includes recommendations on the amounts of the risk equalisation credits and the amounts of the community weighting levies. Why can a new section not be requested to monitor premium hikes under the guise of this legislation? We will consider tabling this amendment again as insurance costs are at unbearable rates for ordinary people. We need to address this head on. The authority assesses if any insurer has been over-compensated by the risk equalisation scheme, enabling it to earn in excess of a reasonable profit but what is a reasonable profit and how do we determine what it is?

I would also ask for some clarification on the newer parts of the Bill. Can the Minister of State outline the rationale for the increase of the number of Health Insurance Authority board members from five to seven under section 3? Senator Boyhan welcomed that but what pushed the increase in the board members from five to seven?

What is the rationale for both changes proposed under section 6? Why does the VHI wish to now sell without an intermediary? What are the benefits and possible risks of this change? While I imagine the removal of the necessity of ministerial approval is to save time and remove some red tape, how can we ensure there is still proper oversight? I would appreciate if the Minister of State could address this concern.

The issue of health insurance is not about the equity of premium; it is about the inability to pay or provide. That is what we should be discussing here today. The argument will be, as it has been year in and year out, that risk equalisation benefits ordinary people who may be more frail and more of a health risk than their neighbour, but we would not need this benefit if all of our citizens had access to a proper functioning public health system, universal health care. That is the real risk we should be managing today.

Senator David Norris: I welcome the Minister of State to the House. I also welcome this Bill. It is a good, important and necessary one. I have been insured with the VHI for more than 50 years. I joined the Trinity scheme. I am very glad it had a community scheme and I am still in it. I had hardly used it until four years ago when I developed a very aggressive cancer and I had a liver transplant. I do not believe I could possibly have afforded the cost of that operation without the VHI and I am very grateful we had this scheme in operation, although I probably had paid for it in my total subscriptions.

The principle and the ethos underpinning this Bill are highly important. The Minister of State said, “the Bill will ensure the ongoing sustainability of the private health insurance market and seek to keep health insurance policies at an affordable price for all citizens, young or old, sick or healthy”.

Senator Máire Devine: Not all citizens.

Senator David Norris: That is a very important objective even if it has not been matched yet. We would all like an inclusive and encompassing health service for all but I am damned glad I had the VHI and did not have to wait forever like poor unfortunate Susie Long in Kilkenny who basically died from poverty. She was killed because of the lack of services and the fact she did not have cover with an insurance company. That was terrible but I am glad I have VHI cover. Thank God for it and I am glad this Bill will assist that continuing.

There are four main principles in health insurance, namely: open enrolment, which protects the so-called risky customers; lifetime cover, which means that the insured cannot be dumped; minimum benefit, which means that there is exactly that, a minimum level of treatment for everybody; and community rating, which means that health insurers cannot alter their prices based on an individual’s current health status. It would be dreadful if one’s plan was revised every time one made a claim. That is what happens in some of the other insurance markets. It happens with car insurance. If one puts in a claim, one will get one’s claim settled but one’s insurance premium will go up. This is an extremely good measure.

The Minister of State defined “community rating” as essentially being “a financial transfer mechanism, whereby money flows from insurers with healthier members to insurers with sicker members”. That is splendid. It is a good socialist principle, from each according to its capacity to each according to its needs. That is the real deal. That is what we need in this country-----

Senator Máire Devine: Communism.

Senator David Norris: -----and that is why I support this Bill. The Bill may not be perfect but we will wait until the Senator’s party is in government for perfection.

The risk equalisation scheme made available €670 million, which is a significant amount of money. That demonstrates the significance of that scheme. From the beginning I have totally supported both community rating and risk equalisation. There were times when the commercial markets were fighting against it as hard as they possibly could.

I note legislation is needed each year, but why is that the case? Is there no mechanism to produce a situation which would be more stable, that would last for a greater period than one year? Has this ever been contemplated? Is there not a way that could be devised that could meet these requirements?

I am glad that the Minister is opening up the board to a greater participation of health workers. I have a few questions. Under the definition section, only one term is defined, namely, ““Principal Act” means the Health Insurance Act”.” That is fairly standard and obvious.

I do not know, although some of my colleagues probably do know, what international health-care plans mean? Does it mean that we insure people who are not Irish citizens or does it mean that we insure people when they are going abroad? I would like the Minister of State to clarify that. That should be included in the definition section because it would make it more accessible

to the ordinary public.

I also do not know the difference between advanced cover and non-advanced cover. That should be included in the definition section also because it is opaque to the average person reading this Bill. They will not know the difference between non-advanced and advanced cover. The Minister of State might put the meaning of these terms on the record of the House. I find it of great interest that a large part of the Bill is consumed with little boxes set out in a table about the different people who will be supported by the risk equalisation fund. The first 12 categories are completely blank. They will get nothing. These are people starting at 50 years of age and over but less than 55 years of age and climbing all the way up. The fund kicks in at when the insured person is 65 years of age and over but less than 70 years of age. We are then given the different figures to which Senator Colm Burke made reference. It is interesting to see the way in which the amount of premium climbs and also to see the difference between females and males. There are some very interesting statistics in that. I am glad the Minister of State is giving due consideration to the mix of skills involved. That is very welcome. The Minister of State said he was pleased to announce, and I was surprised to hear him announce, that “this year’s Bill will provide for a general decrease in the credits across genders and age groups”. I find that very interesting. We are in a position where the health budget, and this is really a mini-health budget, goes up and up every year but this year there has been a decrease. That is to be welcomed but I wonder if there is any explanation for this. Why is that happening? I congratulate the Minister of State. I commend the Bill. I will certainly be voting for it. I doubt if there will be a vote on it, as it will probably be passed unanimously.

An Leas-Chathaoirleach: This is about Second Stage.

Senator David Norris: Yes. I know that but I anticipate the passage of the Bill. It is unlike some other Bills.

An Leas-Chathaoirleach: Votes are more normal on Committee Stage in my experience.

Senator David Norris: Yes, indeed they are, but I am just anticipating joy. This is what life is about - the anticipation of joy and satisfaction.

An Leas-Chathaoirleach: Good on the Senator.

Senator David Norris: And this Bill will provide both.

Senator Victor Boyhan: On a point of order, this is Second Stage. The Leas-Chathaoirleach reminded me of that. It did not really occur to me. There is no time limit for speaking on a Bill on Second Stage.

An Leas-Chathaoirleach: There is.

Senator Victor Boyhan: Is there?

An Leas-Chathaoirleach: It was agreed on the Order of Business that there would be eight minutes for spokespersons. Senator Boyhan had nine minutes.

Senator Victor Boyhan: I am delighted. I know the Leas-Chathaoirleach thought I used it effectively.

An Leas-Chathaoirleach: I was feeling generous at the beginning.

Senator Victor Boyhan: I just wanted to clarify.

Senator David Norris: The Senator used it very effectively and he did not read his speech.

An Leas-Chathaoirleach: The Senator will have plenty of time on Committee Stage.

Senator Victor Boyhan: That is grand. I know I will. I am happy. I just wanted to clarify it on a point of order.

An Leas-Chathaoirleach: I call on the Minister to address the various points raised.

Minister of State at the Department of Health (Deputy Finian McGrath): I thank the Senators for their contributions to the debate on the Bill. I will go through some of the points raised by individuals and if there are any I omitted or do not have time to respond to, I will revert to the Senators. Health insurance is held by a large proportion of people in Ireland relative to other countries. It is important that we take the opportunity to discuss this Bill and the positive effect community rating and other aspects of health insurance regulation have on people's daily lives. As I mentioned in my opening remarks, Sláintecare will introduce change in how people access the health service, and it may mean that the role of private health insurance in our health service also changes. This Bill supports the role that private health insurance currently plays in our health service as a means of supporting people's access to affordable healthcare.

To recap, the main purpose of this Bill is to specify the revised credits, and corresponding stamp duty levies, to apply on health insurance policies from April 2019. The voluntary health insurance system in Ireland operates on the basis of community rating, which means everyone pays the same price for the same product. This is supported by a scheme which aims to keep health insurance more affordable for older and less healthy citizens. As mentioned by a number of colleagues, in other health insurance systems internationally and in other insurance markets in Ireland, the level of risk presented by an individual directly affects the premium paid. Under this scheme, all the money raised in levies from insurers is paid into a fund for the sole purpose of supporting the market in the form of credits payable. The credits and levy rates for next year strike a fair balance between the need to sustain community rating by keeping health insurance affordable for older, less healthy consumers and maintaining the sustainability of the market by keeping younger, healthier consumers in the market.

This Bill will see an increase in the number of Health Insurance Authority board members from five to seven. This was raised by colleagues. This provision will ensure continued strong oversight and regulation of the health insurance market. This change was originally suggested by the Health Insurance Authority board. The Bill will also see some changes introduced with regard to the VHI. The first change is in the composition of the VHI board. The proposed amendment will remove the existing restriction in terms of having only two persons who are "health service providers" on the board. The amendment will also allow for due consideration of the mix of skills present on the board. The second change, which was raised by colleagues, is to ensure a level playing field and to permit the VHI to sell international health care plans directly without an intermediary. This will remove the impediment to VHI's ability to compete and will enable it to avail of significant business opportunities – opportunities that are available to its competitors.

Senator Ardagh made some important points on the legislation. Senator Boyhan referred to the health care, the VHI and the rehab beds. He knows I am working very closely with him on this. He asked, properly, what we are doing. We are spending an extra €700 million in health-

care in 2019. Fundamental questions are rightly asked about where it is going. In my portfolio, for example, we are spending €1.8 billion on disability services. On the broad question as to where we are going, we have a plan and road map in Sláintecare. That is the way forward. This is linked to Senator Devine's question about what we really believe in and the direction we are taking.

I totally agree with the points on simplification, VHI and the governance of the board. The board size is to be increased to make it more efficient and inclusive. As Senator Boyhan said, small boards do not necessarily work, although this view was held a couple of years ago. Senator Colm Burke referred to the rise in the number of board members from five to seven and to board efficiency. When I am in here, he regularly makes a point on value for money.

There was a debate between Senator Devine and Senator Colm Burke on the nurses issue. In 2014, there were 34,509 in the system. This year, 2018, there are 37,220, representing an increase of 2,711. Senator Devine raised the issue of nursing vacancies. It is a problem. I take her point on inequality in our health system. Senator David Norris touched on that also. We have to deal with this. As far as I am concerned, we have started but we have a long way to go. I take the valid points on the principle of universal health care. We have to achieve cross-party support on this. I feel very strongly that Sláintecare is the way forward.

Senator David Norris referred to his experience of VHI. One has to make tough decisions in one's personal life. The Senator obviously made the right decision. The best of luck to him in that regard. He made a very important point on supporting the community rating and unaffordable prices. These are all important points.

I mentioned the change to ensure we have a level playing field to permit VHI to sell international health care plans directly without an intermediary.

Senator David Norris: What are these international health care plans?

Deputy Finian McGrath: I will come back to the Senator with the details. There were specific questions to which I will be responding later. Every single issue raised here will be responded to.

Senator David Norris: I thank the Minister of State.

Deputy Finian McGrath: This Bill allows the Department of Health to maintain support for the core principle of community rating, which is long-established and well-supported Government policy for the health insurance market, and it will ensure that the necessary support is provided to ensure that the costs of health insurance are shared across the insured population.

I thank the Senators for their contributions. I will revert to them directly on any questions that were not answered. I do not have to hand the detail on some of them.

Question put and agreed to.

An Leas-Chathaoirleach: When is it proposed to take Committee Stage?

Senator Colm Burke: Next Tuesday.

Committee Stage ordered for Tuesday, 27 November 2018.

Employment (Miscellaneous Provisions) Bill 2017: Second Stage

Question proposed: “That the Bill be now read a Second Time.”

Minister for Employment Affairs and Social Protection (Deputy Regina Doherty): I am pleased to have the opportunity to introduce the Bill. The Government is delivering on its commitments and this Bill is being brought forward in response to the commitment in A Programme for a Partnership Government to tackle “the problems caused by the increased casualisation of work and to strengthen the regulation of precarious work”.

If enacted, this Bill will improve the security and predictability of working conditions for employees on precarious contracts. I make no apologies for saying there is a particular focus on low-paid, more vulnerable employees in this Bill and I acknowledge that many Members share my interest in workers’ rights and have strong views on this legislation. I genuinely look forward to hearing them during the debate.

However, I am conscious that the vulnerable employees whose lives the Bill will improve have been waiting almost a year since it was published. I would like a Bill that emerges out of this House that the President is able to sign into law as quickly as possible and, please God, it will be before Christmas. We also want to make sure that the legislation is balanced, resilient and that it works in practice.

In a dynamic and ever changing global environment, thankfully, the economy continues to strengthen and expand. The number of people on the live register is the lowest today since May 2008. The number of people in full-time employment accounts for 80% of all employment. However, we must remember those people who, not by choice, are in less secure arrangements and may not know from week to week what hours they will be working. This makes it difficult for them to plan their lives outside of work and the Bill will significantly improve employment protections for them.

Ireland should be proud of its robust suite of employment rights, which provide broad protections to all employees. We have modern dispute resolution structures in the Workplace Relations Commission, WRC, and the Labour Court which are easy to access for both employers and employees. The WRC provides comprehensive early resolution, mediation and adjudication services in relation to the full spectrum of employment rights cases and all of these services are free to the users. It also has a proactive labour inspectorate which carries out workplace inspections to ensure the employment rights of workers and responsibilities of employers are respected. The WRC has an enforcement function in respect of breaches of employment legislation and we have the second highest national minimum wage in the European Union. This Bill is intended to build on that strong foundation.

I took over responsibility for this Bill in September 2017 when certain employment affairs functions were transferred from the former Department of Jobs, Enterprise and Innovation to what is now the Department of Employment Affairs and Social Protection. It would be remiss of me not to acknowledge the work of those who came before me on this Bill’s journey. In that respect I acknowledge the work of the Minister of State at the Departments of Jobs, Enterprise and Innovation and Social Protection, the Taoiseach and Justice and Equality, Deputy Breen, the Minister of State at the Department of Education and Skills, Deputy Mitchell O’Connor, and Senator Ged Nash, who as Minister of State with responsibility for business and employment in the previous Government, commissioned the University of Limerick, UL, to conduct a

study of the prevalence of zero-hour contracts and low-hour contracts in the economy.

Senator David Norris: Hear, hear.

Senator Ray Butler: Hear, hear.

Deputy Regina Doherty: The Bill is more than three years in the making and it is important for Senators to understand the work that has gone into the Bill, including the extensive consultations that have helped to shape and focus it. This work includes the UL study and the public consultation that followed it and it also includes detailed discussions with the Irish Congress of Trade Unions, ICTU, and the Irish Business and Employers Confederation, IBEC, over many months. I thank the many stakeholders who contributed to the development of this Bill at the different stages of the process.

We must remember that this legislation will apply to all employers in every sector of the economy. It is important that we strike a fair balance between the respective rights and obligations of employees and employers. The Government's approach in the legislation is to ensure that where we introduce new rights for employees or strengthening existing provisions in the law, the measures are proportionate and counterbalanced by reasonable defences for employers. We need to recognise the challenges faced by employers in running their businesses or providing their services. We must also remember that the vast majority of employers are good employers who treat their employees well and meet their responsibilities under employment law. These employers should have nothing to fear in this Bill. On the contrary, it is aimed at tackling exploitative employment arrangements.

I refer to a number of important points that came up in commentary as the Bill passed through the Dáil. First, there has been much discussion in recent weeks on bogus self-employment. I remind the House that if an individual believes that he or she is being denied employment rights appropriate to an employee, he or she should pursue a case to the WRC. Similarly if one believes he or she may be falsely self-employed for PRSI purposes, he or she should contact my Department's scope section. Both services are free to the user and easy to access.

The second point concerns the use of if-and-when contracts. There is a suggestion that the Bill does nothing for employees on such contracts. That is not true. On the contrary, the measures in the Bill both individually and in the round will also help to protect employees on if-and-when contracts. The banded hours provision, for example, will apply to someone on an if-and-when contract so that where they have worked an average number of hours over the previous 12-month reference period, they will be entitled to be placed on a band of hours that reflects the reality of the hours they have worked. Employers are obliged to inform employees by the fifth day of their employment what the employer reasonably expects the normal length of the working day or the working week will be. There will be no more waiting on a Sunday night for a text message as to whether one will work for one hour or 30 hours the following week. Employers are also obliged to state the expected duration of the contract and whether the contract is temporary or fixed term on or before the fifth day of employment. Employees on if-and-when contracts will also benefit from the new minimum compensation provisions where they are given notice of hours of work but do not receive those hours. Finally, employees on such contracts will also benefit from the various anti-penalisation measures.

When I completed my Second Stage contribution in the Dáil, I said that I was proud to commend the Bill to that House. However, the passage of the Bill through the Dáil resulted in a

number of Opposition amendments being made. There was much compromise on Committee Stage between amendments that went back and forth. For example, we will reduce the reference period in the banded hours provision from 18 months to 12 months on the suggestion of the Opposition. We also accepted an amendment to reduce from 2 months to 4 weeks the time within which an employer must respond to an employee's request to be placed on a band of hours. Unfortunately, I was not able to persuade all Deputies on a small number of problematic amendments, with the result that the Bill, as passed by the Dáil, contains a number of provisions that need to be revisited. I intend to table a small number of amendments on Committee Stage and I will outline them as we come to the relevant section.

I now propose to outline the main provisions of the Bill, as passed by the Dáil. Section 1 is the commencement provision. Section 1(2) is a deviation from the standard commencement provision and is the result of an Opposition amendment that was carried. I said on Report Stage in the Dáil that this amendment to the commencement provision was problematic for us. It does not exist anywhere else on the Statute Book and it genuinely could have unintended consequences. My officials are discussing this with the Office of the Parliamentary Counsel and, therefore, I highlight that it may require an amendment.

Senator David Norris: Could the Minister specify the unintended consequences so that we can note them?

Deputy Regina Doherty: I will but I will not do so until Committee Stage. I will let the Senator know beforehand.

An Leas-Chathaoirleach: The Minister does not have to respond at this stage. The Senator will have an opportunity to make his contribution in due course.

Deputy Regina Doherty: Section 2 is a standard provision setting out definitions. The Bill amends the Terms of Employment (Information) Act 1994 and the Organisation of Working Time Act 1997.

It is important to remember that the existing definitions relating to “contract of employment”, “employee” and “employer” in both Acts will apply to this Bill. It is necessary to repeal certain sections of existing legislation to improve on them in this Bill.

Section 3 repeals certain terms of employment listed in section 3(1) of the Terms of Employment (Information) Act 1994. These terms are inserted into section 3(1A) of the same Act by section 7, so that they are required to be provided within five days of commencement of employment. Section 3(b) repeals section 16 of the National Minimum Wage Act 2000 so that section 18 of this Bill will replace it.

Section 4 is an amendment the Minister for Business, Enterprise and Innovation requested on behalf of the WRC. Currently, adjudication officers of the WRC do not have powers to compel witnesses to attend a hearing to give evidence in cases taken under the Unfair Dismissals Act 1977. The WRC has powers of witness compellability under other employment rights legislation and the intention is to remedy this situation and to put unfair dismissals legislation on the same footing. When the Terms of Employment (Information) Act was enacted in 1994, the WRC did not exist.

Section 5 enters the definition of the WRC into that Act.

Section 6 removes the exclusion of employees who normally work less than eight hours per week in order that such employees will be entitled to receive the written statements of their terms of employment that will be required under the amended 1994 Act. This is to protect employees on low-hour contracts so that they too will be entitled to receive the essential aspects of the employment relationship in writing shortly after starting work for a new employer. The Terms of Employment (Information) Act 1994 provides that employees have to be a month in continuous employment of the employer before a case can be pursued under the Act. That remains the case in this Bill. This provision acts as a deterrent against frivolous or vexatious complaints.

Section 7 amends section 3 of the 1994 Act to require that an employer shall provide employees with a written statement containing the following five core terms of employment within five days of the commencement of employment; the full names of the employer and the employee; the address of the employer; the duration of the contract, where temporary or fixed term; the rate or method of calculation of the employee's pay; and the number of hours the employer reasonably expects the employee to work on a daily and weekly basis. This is an important element of the Bill and is designed to ensure that employees are much better informed of the crucial terms of employment at a much earlier stage. This provision is a significant change, which is designed to ensure employees have much greater clarity and predictability about their daily and weekly hours of work. It is not acceptable for employers to provide contracts of employment that are so vague about an employee's hours of work as to be completely meaningless.

Section 8 deals with posted workers. It amends section 4 of the 1994 Act to require that an employer must provide employees who are required to work outside the State for a period longer than one month, with the written statement containing the aforementioned five essential terms of employment prior to their departure.

Section 9 sets out matters relating to existing contracts of employment. The section amends section 6 of the 1994 Act to provide that where an existing employee requests an employer to provide the written statement containing the five core terms of employment the employer must do so within two months.

Section 10 is the offence provision. It introduces an offence for an employer who fails to provide the statement of core terms of employment required under section 7 within one month of commencement of employment. This section also makes it an offence for an employer who deliberately or recklessly provides false or misleading information to an employee as part of the statement of core terms of employment. For example, an employer who gives a false name so that an employee cannot litigate against that employer will be deemed to have committed an offence under this provision. It is important this section also provides for appropriate defences for employers, namely that they exercised due diligence and took reasonable precautions to ensure the Act was complied with. The ultimate sanction for employers who fail to provide a written statement of core terms of employment or who deliberately misrepresent what is on this day 5 statement is a class A fine up to €5000 or imprisonment not exceeding 12 months, or both. However, a WRC inspector may issue a fixed payment notice in lieu of prosecution for less egregious offences. The fixed payment imposed will be less than the court fine. The purpose of creating this offence provision is to promote better work practices and provide greater clarity around the essential elements of the employment relationship for both the employer and the employee. At the start of the employment relationship, every employee should be entitled to know basic information such as who their employer is, how much they will get paid and what is reasonably expected from them with regard to the normal length of the working day or week.

It should not be too difficult for employers to provide this kind of information.

Section 11 inserts a new section 6C in the 1994 Act which prohibits the penalisation of an employee for exercising their rights under the Act. This is a new departure. An anti-penalisation provision never existed in the 1994 Act. Penalisation is broadly defined in the section and includes threats of penalisation. It is important employees believe they can exercise their rights under the Act without any repercussions. This is all the more important in the case of vulnerable employees.

Section 12 provides that an employee must remain in the employment for one month before he or she is entitled to seek redress under the Act. It also provides that an employee cannot proceed with a case against an employer that has been prosecuted for the same contravention if it involves the same employee and the same facts. This is to prevent double jeopardy for employers. There is a similar provision in section 24 of the National Minimum Wage Act 2000.

Section 13 amends the Organisation of Working Time Act 1997 to provide for the insertion of relevant definitions. I will table a Government amendment on Committee Stage to delete the definition of “employment regulation order”, as it is defined in that Act.

Section 14 amends section 5 of the Organisation of Working Time Act which relieves an employer from complying with the new banded hours provisions in exceptional circumstances or an emergency.

Section 15 replaces the existing section 18 in the Organisation of Working Time Act with a new section 18, which has two effects. It prohibits zero-hours contracts in most circumstances. The UL study found the use of zero-hour contracts is not extensive in Ireland. However, we want to ensure that remains the position. Such contracts will be prohibited in most circumstances except where they are essential to allow employers to provide cover in emergencies, to cover short-term routine absences or if the work is genuinely casual. The section also introduces a new minimum payment of three times the hourly rate of the national minimum wage or three times the minimum rate set down in an employment regulation order, ERO, to compensate workers if they are called into work but do not receive the expected hours of work. For example, if an employer calls an employee into work but then decides they are not needed, that employee would be entitled to three times the hourly minimum wage. This is to discourage the unscrupulous practice of calling in more employees than one needs and giving the ones who show up first the work. Under this new legislation, they will get meaningful compensation for that error.

Senator David Norris: Is it one payment of €28.65?

An Leas-Chathaoirleach: Senator Norris will have time to contribute.

Deputy Regina Doherty: It will be the three hours. It will be the minimum wage multiplied by three.

An Leas-Chathaoirleach: The Minister does not have to respond to the Senator. He will make his contribution when his turn comes.

Deputy Regina Doherty: It is fine.

Senator David Norris: This is a way of getting answers and the Minister is graciously giving them.

An Leas-Chathaoirleach: Senator Norris has this awful habit of contributing *ad lib* when other people are speaking.

Senator David Norris: I am seeking information.

An Leas-Chathaoirleach: I have made it clear. The Senator's turn will come. The Minister, without interruption.

Deputy Regina Doherty: The current rate is €9.55 an hour, multiplied by three would make it €28.65.

Senator David Norris: That is the only payment they get.

Deputy Regina Doherty: Yes, for those three hours.

Senator David Norris: I thank the Minister.

An Leas-Chathaoirleach: I do not want this to continue. The Senator is out of order.

Deputy Regina Doherty: The minimum wage will increase in January.

The ERO fixes minimum rates of payment and conditions of employment for workers usually in the low-wage sectors. EROs are in place for the contract cleaning and security industries. There have been requests from some quarters to define casual work. However, the term "work of a casual nature" has existed in the Organisation of Working Time Act since 1997 without ever having to be defined. It has not led to a regulatory problem of employers incorrectly categorising employees as casual in the 20 years since its enactment. It is not good practice to put definitions in legislation when the plain, ordinary meaning of a word is capable of being understood by the bodies adjudicating on it. The WRC and the Labour Court are capable of examining all of the circumstances of a particular case and then making an appropriate judgment as to whether an arrangement is genuinely casual. They have been doing a sterling job up until now.

Section 16 inserts a new section 18A into the Organisation of Working Time Act. It introduces a new right for employees who habitually work more hours each week than is provided for in their contracts of employment to request to be placed in a band of weekly working hours that better reflects the reality of the hours they have worked over the previous 12 months. There was much debate in the Dáil about how workers on low-hour contracts who consistently work more hours than provided for in their contracts have difficulties in applying for mortgages, loans from their credit unions or any interaction that involves a financial arrangement.

The situation is also open to abuse by an employer who may use it as a means of exercising undue control over employees where the threat of being put back on the lower contract hours hangs over the employee.

How will the banded hours provision work? An employee will request in writing to be placed in the relevant band of hours. The employer has four weeks to consider the request. The section provides reasonable defences for employers to refuse an employee's request where, perhaps, the facts do not support the employee's claim; significant adverse changes have impacted on the business - an example would be the loss of an important contract and the employer might not be able to offer the same kind of work; an emergency situation for example some businesses have recently been subject to major adverse weather conditions such as flooding which would impact on their business arrange-

6 o'clock

ments; and where the hours worked by the employee were due to a genuinely temporary situation such as, for example, providing cover for somebody on maternity leave. The latter would not be considered to be an ongoing arrangement. Where a claim is disputed or refused the employee can refer it to the WRC for mediation or adjudication. If the adjudication officer finds in the employee's favour, the redress will be that he or she will be placed in the appropriate band of hours. No other compensation is provided in order to avoid vexatious or frivolous claims. An appeal against an adjudication officer's decision will be to the Labour Court. Enforcement of a WRC or Labour Court decision will be by way of a District Court order. The section will not apply to employers who have entered into banded hours arrangements through agreements arrived at as a result of collective bargaining with employees. This is to recognise that in some sectors, particularly the retail sector, banded hours arrangements have been agreed between the employer and employees for years and years and have been working exceptionally well. It is important to remember that an employer is not obliged to offer hours of work in a week where the employees were not expected to work or when the business is not open. I refer here, for example, to a hotel in a west of Ireland seaside town that closes for the winter months and that would not be obliged to pay a waiter while the premises is closed.

The Government will be tabling an amendment on Committee Stage to address a drafting issue with the Opposition amendment that was carried. It will be to remove the phrases "more than" and "less than". The Office of the Parliamentary Counsel has advised that if these phrases remain, it will cause confusion and uncertainty to both employers and employees attempting to understand the rights provided to them under the Bill. The amendment will be to improve the drafting of the provision only; it is not the intention to interfere with the width of the bands agreed in the Dáil.

Section 17 replaces the existing section 26 of the Organisation of Working Time Act 1997 to strengthen the protection against penalisation of employees who wish to invoke their rights under that Act. Employees need to feel safe in vindicating an employment right. If an employee believes he or she has been penalised or threatened with penalisation for invoking any right under the Organisation of Working Time Act, the adjudication officer may award up to two years of salary.

Section 18 is introduced on foot of the recommendations of the Low Pay Commission, LPC, in respect of current sub-minima rates of the national minimum wage. The current system allows for reduced rates of the national minimum wage to apply for those under 18 and for those over 18 in the first and second year of their first employment, and for certain types of traineeships. The LPC's recommendations are straightforward: first, the commission recommended the abolition of the trainee rates, which it felt lacked clear definition of the nature of what constituted appropriate training, and were, in any event, relatively little used; and, second, that the age-based and first employment rates should be retained in light of the statutory protections offered by other employment rights legislation, and in order to protect younger workers' access to the labour market, but on a simplified basis to improve both compliance and the ease of operation. This section will mean that nobody who is aged 20 or over can be placed on a sub-minima rate of minimum wage. The current legislation has no upper age limit in circumstances where it is a person's first employment. It also makes provision for the percentages at which these sub-minima wages are set to be adjusted in the future by statutory instrument, taking into account the labour market conditions at the time. This provision will permit possible further upward adjustment in the rates in a controlled manner where the possibility of any negative impacts on employment for young people can be monitored and assessed. The LPC recommendations in

this matter, grounded on research carried out by the Economic and Social Research Institute, ESRI, were, for the first time, supported by all nine members of the commission, employer and employee interests, and by the independent members. Section 19 will allow an inspector of the WRC to issue a fixed payment notice where the inspector has reasonable grounds for believing that a person has committed an offence, that is, by not providing the written statement of core terms of employment within the prescribed time or by deliberately or recklessly providing false or misleading information as part of the statement. Such fixed payment notices are already issued under the Payment of Wages Act 1991 and the National Minimum Wage Act 2000. This is considered to be an effective way of securing compliance with the relevant provisions and an effective alternative to prosecution.

Section 20 deals with the false designation of self-employment. I said on Report Stage in the Dáil that I genuinely shared Deputy O’Dea’s interest in tackling bogus self-employment. From a policy perspective, however, the Bill is not the appropriate vehicle for reaching a collective agreement on how to tackle it. The amendment is of such potential impact that it should be subject to proper and thorough scrutiny at a pre-legislative forum in order to provide the Houses of the Oireachtas and all stakeholders with the opportunity to consider the full implications of what is being proposed. There is broad agreement that the issue of false self-employment deprives employees of important employment rights and the State of important revenues. However, we already have significant and comprehensive provisions in legislation to tackle it. We will do more to identify, investigate and enforce the false declaration of employment as self-employment. I am pleased to note that the Joint Committee on Employment Affairs and Social Protection recently commenced hearings on this very issue and has indicated that it intends to examine the issue in a comprehensive manner with a wide range of stakeholders. It is envisaged that this work will take a number of months. The joint committee’s work in this area is timely and I welcome. My Department has already been represented a hearing of the committee and is committed to assisting the committee further in its work. Against this background, it makes sense for this section to be removed from the Bill to allow the Bill complete its passage through the Oireachtas as quickly as possible. I will be tabling a Government amendment to this effect on Committee Stage.

Legislation can be a stubborn creature. It tends to remain on the Statute Book and we must be cognisant that employment legislation has a significant influence on the labour market. That is why it is really important that we get this legislation right the first time. I hope that we can work together to ensure that this important legislation, which I believe is probably the most significant employment rights legislation in a generation, can be put on the Statute Book prior to Christmas. The Bill is intended to help those employees in precarious employment and most in need of stronger employment protections. They have waited long enough for this legislation. They are relying on us to finalise this Bill as quickly as possible. I urge Senators to work with me to make that a reality.

Senator Catherine Ardagh: As the Minister indicated, this legislation directly affects many people who are in receipt of very low wages. Fianna Fáil supports the passing of this Bill to Committee Stage. Our party policy is to ban zero-hour and low-hour contracts that are abusive to workers. We have consistently advocated our policy for the provision of banded hour contracts that work for both worker and employer in a balanced and proportionate way. These commitments were in our party’s manifesto in 2016. Significantly, both of these key features are provided for in this Bill and represent progress on policy commitments secured by Fianna Fáil in the confidence and supply arrangement during the formation of this Government. We

are happy to work with the Minister on some of the amendments she has outlined in order that the Bill will pass seamlessly through Committee Stage.

The main provisions of the Bill are: to ensure that employees are better informed about the nature of their employment arrangements; to prohibit zero-hour contracts in most circumstances; and to strengthen the provisions relating to minimum payments to low-paid employees who may be called in to work for a period but not provided with that work. It introduces a banded hours provision so that employees on low-hour contracts who consistently work more hours each week than provided for in their contracts of employment, are entitled to be placed in a band of hours that better reflects the reality of the hours they have worked over a reference period. The Bill strengthens the anti-penalisation provisions for employees who invoke a right under the Terms of Employment (Information) Act 1994 and the Organisation of Working Time Act 1997.

With regard to zero-hour contracts, section 15 replaces the existing section 18 of the Organisation of Working Time Act with a new section 18, which prohibits zero-hour practices in most circumstances. It provides that zero-hour practices are allowed in limited circumstances, for example, emergencies or short-term relief work to cover routine absences. In situations where employees are called into work but sent home without work, there will be a new minimum payment of three times the national minimum wage or three times the minimum hourly rate in an employment regulation order. Employees who are on call will continue to be excluded from this minimum payment.

Section 16 deals with banded hours. The Bill introduces banded hour contracts in primary employment legislation. A banded hours system means that the employee is aware of his or her minimum guaranteed weekly working hours and the likely maximum number of hours he or she will be required to work. This directly affects employees looking for a loan or applying for a mortgage in that it can be taken into account in their application, thereby giving some certainty in their lives. Banded hours mean that employees are guaranteed working hours that do not fall below the minimum of the band that applies to them. Under the provisions of the Bill an employee will be entitled, where his or her contract of employment does not reflect the number of hours habitually worked per week over a reference period, to be placed on a band of working hours that is a more accurate reflection of hours worked. The reference period provided for is 12 months, whereas it was previously 18 months. If an employee believes his or her contract does not accurately reflect the hours worked, that employee requests to be placed on the band of weekly working hours. The employer will have four weeks to consider the request and to place the employee in the relevant band of hours. Disputes will be referred to the Workplace Relations Commission and to the Labour Court, on appeal.

This section of the Bill also includes reasonable defences for employers to refuse an employee's request to be placed on a particular band, for example, where the facts do not support the employee's claim, where significant adverse changes have impacted on the business, for example, emergency circumstances, where the business has had to close due to flooding or other events, and where the hours worked by the employee were due to a genuinely temporary situation. It is important that we balance safeguarding workers' rights with the rights of employers.

The Minister referred to section 20 dealing with bogus self-employment. Deputy O'Dea has raised this issue with a view to ensuring we tackle the prolific use of bogus self-employment, not just in the private sector but also in the public sector. It is not just employees who are being deprived of their social welfare benefits, but taxpayers and the Revenue are also deprived

of employer's PRSI by both the private sector and the public sector. It is not just an issue that affects the private sector.

Fianna Fáil included and secured an amendment on Report Stage to make it an offence for an employer to incorrectly designate an employee as self-employed. This is very much to make the point that this is a serious issue and has to be tackled. I welcome that the Minister is creating a separate forum to tackle this issue. As I said, we are happy to work with the Minister on the basis that this provision will be removed and the Bill goes through Committee Stage without delay. Our main focus is to facilitate the passage of the Bill and under no circumstances do we want to block it. This is a serious issue that has to be addressed. We are committed to workers' rights and ending situations where workers are erroneously designated as self-employed.

The Fianna Fáil position is that workers on low and zero-hour contracts have no security when it comes to hours or pay from week to week. It is very unfair that workers in such precarious positions face uncertainty every week and every month. Under the confidence and supply arrangement we extracted a policy commitment to tackle the problems caused by the increased casualisation of work that prevents workers from being able to save or have any job security. Workers deserve a fair reward for the work performed. We believe that priority focus should be on low and medium paid workers and improving their job security. Too many workers, most of whom are women, are in unstable work as they are only offered part-time or temporary employment, or zero-hour contracts. We support fair and decent living wages for all workers in Ireland. Zero-hour contracts must be changed to allow workers more certainty. Workers on low and zero-hour contracts must be allowed the right to request more hours of work.

We support proportionate legislation on banded-hour contracts for those on low pay. This will allow workers on low and zero-hour contracts a minimum set of hours and the right to request more hours, as practised in other larger retailers. As a party, we recognise that the majority of employers act in a fair and decent manner and treat their employees appropriately. On Committee Stage we will be receptive to amendments to section 10, which states that an employer who fails to furnish an employee with a statement in writing no later than five days after commencement of the particulars of their employment may be subject to a summary conviction and a class A fine or imprisonment for a term not exceeding 12 months, or both. This is civil legislation and I do not believe it should contain criminal sanctions. The WRC is a very effective tool; it has been given many more powers since its establishment and is working well. Ultimately, we would be happy to review the amendments the Minister tables in regard to section 10. A law which states that somebody can go to jail for 12 months if he or she does not provide information in time seems disproportionate and unfairly harsh on employers, and we will be receptive to amendments to improve this section on Committee Stage.

I thank the Minister for coming to the House. I look forward to the speedy passage of the Bill before Christmas.

Senator Michael McDowell: I welcome the Minister. I want to indicate my personal support for this Bill in substance. Whereas one might instinctively hold back on further regulation of the employment relationship, looking internationally across the western world, both in the United States and in the United Kingdom, the republican value of having a coherent economic community in which there is not a class of the wealthy exploiting the poor is being diminished constantly. One only has to look to what has happened in the United Kingdom, where, for ten years now, there has been virtually no change in the real value of workers' wages at a time when the remuneration of the wealthy, those who are in charge of the banks and so on, seems to be

unlimited. One wonders what kind of society thinks it is sustainable to have that increasing divergence between those who are the bottom of the economic heap, who are trying to participate, and those who are at the top of the economic heap, who are trying to become wealthier. One only has to look at the divergence in the US between the group which they refer to as the middle class - a phrase which seems to mean the working class, in our view of the world - such as the people working in Walmart, for instance, and the wealthy, who seem to be pursuing at all costs the idea that their retirement funds and their personal wealth should accumulate at a far faster rate than the capacity of ordinary workers, on whom their wealth is fundamentally dependent.

It seems the casualisation of employment relations is something which is disempowering for the most vulnerable and unorganised employees, and is convenient for those who are in a position to exploit them economically. Although we are now in a far better position than we were a few years ago in terms of employment and we are approaching full employment, which should give workers greater opportunities to earn more and be more justly remunerated than would be the case if there was high unemployment, we are right to do something about the disempowering aspects of casualisation. I support the principle of this legislation.

I want to say two things about the Minister's speech. I looked carefully at the amendment that was inserted as Part 7 on designation of persons as self-employed. I know exactly what Deputy O'Dea was driving at in tabling this amendment and what he was trying to achieve, which is twofold. First, it is to ensure that those who are in *de facto* employment actually enjoy *de jure* rights as an employee; I am fully in favour of that. Second, it is to ensure that those who are in enterprises in competition with each other are not in a position to effectively avoid their employment law, social welfare law and tax law obligations to the detriment of their competitors, and to drive down their costs by exploiting unfair designation of employees as independent contractors.

However, I agree with the Minister. The Long Title makes no mention of Part 7 and the designation offence because obviously it was a late amendment to the Bill.

Senator David Norris: The Title could be changed.

Senator Michael McDowell: If it should be there, it should be there and the fact that it arrives late is immaterial. However, section 20 states: "It shall be an offence for an employer to incorrectly designate an employee as self-employed." It also provides punishments for that offence. This is creating a criminal offence. To find out who commits this offence and who does not, it is necessary to go to section 20(8) which provides two indicative lists which are admitted not to be either exhaustive or in any sense absolutely necessary for a court, presumably, to determine whether someone is or is not an employee, or is or is not self-employed.

There seems to be a drafting error in section 20(6) which states: "In proceedings for an offence under this section, it shall be a defence for the accused to prove that he or she exercised due diligence and took reasonable precautions or any person under the control of the accused to ensure that this designation was correct." I do not blame a Deputy for making an error of this kind, but it would have to be reconsidered.

Page 19 of the Bill deals with indicative characteristics of self-employment. One of the characteristics of employment is that the person, "receives expense payments to cover subsistence and/or travel expenses". I can well imagine self-employed people asking for subsistence or travel expenses in carrying out a function. I do not think that would actually tip the balance

one way or another. Sections 20(9)(e), (f) and (g) do not seem to be indicative of self-employment or non-self-employment. Section 20(9)(j) provides that someone, “has a fixed place of business where materials, equipment etc. can be stored”. I do not think that the absence of such a fixed place of business is an indication that somebody is not a self-employed person.

I agree with the Minister that the table in section 16 should be amended in the way the draftsman has suggested because it is confusing in its current form. I welcome the Bill. I happen to agree with the Minister on both of those issues. I ask all Members of the House to listen carefully to what she has said. She has made reasonable points. She is not attempting to avoid the problem of false designation of self-employment, but she is asking the following very reasonable questions. Is this the vehicle in which to do it? Will penalisation in a summary offence be effective? Is the formulation of criteria for deciding whether somebody has been falsely designated, as set out in the particular section, apt to underlie a criminal conviction beyond reasonable doubt against an individual who may or may not be trying to do his or her best?

Senator Ray Butler: I welcome the Minister to the House. I believe this is the first time I have spoken in the House with her present since the budget. I thank her for what she did for the self-employed in the budget. In the middle of next year for the first time the 400,000 self-employed people will get social protection recognition through jobseeker’s payments.

The Bill provides that employers must give employees five core terms of employment within five days of commencement of employment. Employers who have not provided this statement after one month will be open to prosecution. This is a new offence. It will also be an offence for an employer to deliberately misrepresent the information required in the statement of the five core terms.

The Bill prohibits zero-hour contracts in most circumstances, except in situations of genuine casual employment and where they are essential to allow employers to provide cover in emergency situations or to cover short-term absence. All employees, including people on if-and-when contracts will benefit from the balance of measures proposed in the Bill.

The Bill provides for a new minimum payment for low-paid workers who may be called into work but sent home again without the promised work or any meaningful compensation. The focus here is on low-paid employees. The Bill provides for a new minimum compensation payment of three times the national minimum wage hourly rate or three times the hourly rate set out in an employment regulation order, ERO. Traditionally, EROs have operated in low-wage sectors. Currently, EROs are in place for the contract cleaning and security industries, providing for minimum hourly rates of pay of €10.40, which will rise to €10.80 from 1 December 2018, and €11.35 respectively. The provision applies to low-paid workers to ensure it is focused on those most in need of stronger protections in this area. The provision will also act as a deterrent against the unscrupulous practice of employers calling into work, for example, ten people where there is only work for five people and the first five to show up get the work.

The Bill introduces a right for employees whose contract of employment does not reflect the reality of the hours they habitually work. This creates difficulties for employees in accessing credit, including mortgages. Under the Bill, such employees will be entitled to be placed in a band of hours that better reflects the hours they worked over a 12-month reference period. The banded hours provisions will significantly improve the predictability and security of working hours for employees, so that they can better plan and get on with their lives outside of work.

The Bill provides strong anti-penalisation provisions for employees who invoke their rights under this legislation. This is a key element of the Bill for workers in less secure employment who may be afraid to exercise their rights.

There has been much talk about bogus self-employed people. I am delighted that section 20 has been removed from the Bill and that the Oireachtas Joint Committee on Employment Affairs and Social Protection will commence hearings on the matters. I have seen this at first hand. During the recession many bogus self-employed people in the courier business, through no fault of their own, when things were going well were given big fancy vehicles to drive around. The terms of employment were that one was made self-employed. When things were going well, these people made a living for themselves. When the crash came, they were bogus self-employed and they were entitled to nothing. What families had to go through to try to get social protection payments was horrendous. In certain cases, it took 12 to 18 months before a payment came through. I welcome that we are going to look at this through the Joint Committee on Employment Affairs and Social Protection and that we will bring in stronger legislation in this area. I congratulate the Minister on this Bill and look forward to bringing it further in this House.

Senator Paul Gavan: I welcome the Minister and this important Bill. I know it has been a long time in the making and that consistent and persistent work has been done by my colleagues in the Irish Congress of Trade Unions, my own union, SIPTU, Mandate and Unite. I acknowledge the work of the former Minister of State, our colleague, Senator Nash, and the important report from the University of Limerick on zero and low-hour contracts. I am delighted to see a number of aspects of my party's Banded Hours Contract Bill have been incorporated into the legislation. I think this is due recognition of my party colleagues, Deputies Cullinane and Brady, and Conor McCabe.

I thought it might be useful to start by talking about the contracts people have. Here is one from the hotel industry which is very common throughout Limerick. It states that “[g]iven the nature of the hotel business, the Hotel cannot be specific on the number of hours each member of staff will be required to work each week.” One from a prominent manufacturing site in Limerick states:

Hours of work are solely dependent on the department and daily volume of orders that need to be completed. This can and does vary on a daily basis. The company operates from Sunday to Saturday.

It goes on to state:

The Company reserves the right to change these working hours should circumstances require it. As much notice as possible of any such change will be given to you.

On occasions, however ... little, if any, notice will be possible and you should be aware of same.

That is a very standard contract from a very prominent manufacturing site in Limerick. One from the nursing home industry stated that “your normal working hours will be up to 48 hours per week, Monday to Sunday”. It is that stark.

Due to my background as a trade union official, people often ask me, while they know these contracts exist, how common they are. They are extremely common and are becoming more

common. A frightening statistic I saw today is that of the jobs created in the last 15 months, 66% are temporary. That is quite shocking. We have very good rates of employment growth but two out of three of those jobs are temporary. That comes from CSO figures and from Michael Taft, a respected economist. We have a major problem. Some fantastic work was launched last week. Senator Nash was at the launch with me. It was called Precarious Work, Precarious Lives, by Sinéad Pembroke from the Think-tank for Action on Social Change, TASC. It details that in Ireland, 20% of workers are part-time, many of them in involuntary part-time work. A further 8% are on temporary contracts and 2.5% are temporary agency staff. This type of contract has been inflicted on a big portion of the workforce.

I welcome the Minister's speech. As she points out, people have no security. They cannot plan for the future and cannot get a bank loan. They could not even dream about a mortgage. It is important this Bill is enacted. While we have some concerns about it, I assure the Minister of Sinn Féin's support for it and we will do all in our power to ensure that the Bill is swiftly completed. That includes trying to complete it this evening. I might shorten my speech to allow others in because I think we are due to finish at 7 p.m.

Acting Chairman (Senator John O'Mahony): We will adjourn the debate at 7 p.m.

Senator Paul Gavan: I encourage colleagues to take a lead from us. I do not think we need to come back to do this on a second day. I mean that respectfully since I know everyone has important points to make. We need to get this Bill through before Christmas and the Minister will have our support. I welcome all the provisions in the Bill. The points about specifying hours are welcome. I would like to see a complete ban of if-and-when contracts but we will support this Bill as it stands. The point about introducing a payment floor is welcome, as are the narrow bands in the Bill. We are happy to look at the point the Minister makes about how to redraft the "more or less" phrasing and we will hopefully not have any issues with it.

We need a definition of casual work. We are not going to object to it in this Bill. I see it across the hotel sector in Limerick. People have been working for years in hotels under a casual contract and employment so there is a problem there. I want to talk about self-employment. Deputy O'Dea's amendment is well-intended but it will delay this Bill and, therefore, we will work with the Government to make sure this Bill comes through. There is a major problem with bogus self-employment. I speak from my experience as a union official. We need new legislation. Current legislation is not comprehensive enough. I hope, as does the Minister, that the Joint Committee on Employment Affairs and Social Protection will deal with that swiftly. We differ with regard to sub-minimum rates of pay. The Minister knows that from a previous conversation. We will not lodge objections at this point because we want to see this Bill go through.

It is important that we look at Workplace Relations Commission, WRC, resources. Some €444,000 of unpaid wages were recovered last year in the food and drink sector alone from 600 investigations. When there is a non-compliance rate for employers as high as 54%, that tells us there is a major problem, so we need to look at that with regard to making sure we have more resources. I respectfully disagree with our colleague, Senator Ardagh, about criminalisation. We need it because unfortunately increasing numbers of employers are ignoring WRC recommendations and even enforcement orders. I have brought some of those issues to the attention of Cabinet colleagues of the Minister. We should welcome this Bill. It reflects well on the Minister, on the committee and on the tremendous work of trade union movements and colleagues across all parties. I wish it every success.

Senator Colette Kelleher: I welcome the Minister and commend the Government for this important legislation. As a former member of Mandate, I also commend its work in pushing for this legislation. Other trade unions have been involved too. It is a long overdue step in promoting workers' rights and a realisation of the plight that many workers in our workplaces, in the services, retail, hospitality, care, cleaning and security sectors, face daily. Women are often forced into these kinds of work with a subsequent knock-on effect on their children and ensuing poverty. I agree with John Douglas, general secretary of Mandate, which represents 40,000 workers. He stated: "This piece of legislation is the single most important piece of legislation for vulnerable workers in decades." It is urgent that we pass it speedily to provide for the prohibition of zero-hour contracts, which are deeply damaging to employees and their families, many of them women, who are bound by the contracts.

These contracts create a dictatorial environment where there is little or no certainty for the employee about hours or conditions. These blatantly unfair practices push people and families into the grip of poverty and I welcome moves to abolish them. I welcome the minimum payments and the disincentive that that will create for employers to call people in when they do not need them and not giving them work. The banded hours provisions are to be welcomed. I especially welcome sections 7, 9 and 10 relating to the written statement of core terms and conditions. People often do not know what they are entitled to and what they can ask for and that is shocking. The written statement that people are entitled to would go a long way to enhancing workers' rights and also for people to seek redress when rights are infringed.

I commend the spirit of the Bill and the protection of the most vulnerable workers. I am concerned about bogus self-employment and those people who deliver food to us. I am concerned about who will look after those people, who are very often young, if they have an accident and come off their bicycle and where they will get the care they need. That might not fit in this but it is an urgent matter. We are exploiting our young people particularly in exposing them to that type of employment. It is grossly unfair, it is dangerous and it needs to be outlawed, if not in this legislation then elsewhere. However this legislation gives us the opportunity to outlaw some of these unfair practices now and for good. We must also do all we can to protect those vulnerable people who do not come under the Bill's remit. I commend the Bill.

Senator Alice-Mary Higgins: The Bill has many positive elements and there are sections that I commend specifically. There may be opportunity on Committee Stage to go through some of those sections. I am happy to see the narrow bands in the banded contracts. There have been some good decisions on this and that should be retained.

I had the opportunity in April to launch the TASC report "Living with uncertainty" which examined the social implications of precarious work. It examined the context of pressure, abuse and exploitation, its very significant impact on health, family life and security, and on capacity to plan for the future, as others have outlined. There is also a knock on-effect on communities in their social fabric and cohesion, because it is not only people's own family lives that are affected but also their capacity to engage with others, and build society. Recently, that report has been followed up with the report "Precarious Lives". The impacts are very significant and are not only cause for serious concern among the individuals affected but all of us in society.

As I am trying to be brief, I will discuss only two or three of my concerns with this Bill, although I am extremely supportive of it, welcome it and wish to expedite its passage through the House. There may be areas in the Bill which, though not designed as such, might prove to be loopholes in future. The University of Limerick's excellent research was mentioned. I

learned something when I read this Bill. We have always been told that people got 15 hours but looking at the Organisation of Working Time Act 1997 it can often be less than that. There had been a perception that that was the default form of contract when, in fact, if and when contracts prevailed. The University of Limerick report gave great insight into the ways in which loopholes were being used in a way that was not being monitored. I would be happy to work with the Minister on this, but I want us to build some form of review or capacity into this Bill so that we can examine some of the areas that may become loopholes in the future and ensure that we do not wait a decade for university research to identify them. The areas for concern that I have seen are if and when contracts, questions of how hours are determined, such as whether it is usually 15 hours, or if there a default. There is the matter of the caveat that allows an employer to secure an exemption if the employee is not available for any other reason. There is the question of casual work and protection against penalisation. I may come back to the Minister but there are a few areas where we could schedule a review to ensure that the Bill is functioning as planned.

Self-employment has been addressed. I would not like to see that delayed because of the committee but we will continue to press on it. There is also the matter of appeals on scope determination of self-employment which is something that we can progress without legislation. There is concern about the overturning of scope determinations of employee status.

Finally, I urge that the Minister would consider accepting amendments on the request for more hours which is a crucial issue. Employees should have the right to request extra hours. The committee has seen people having to access family income supplement or finding themselves one or two hours short of accessing family income supplement. This might be addressed on Committee Stage.

Senator Gerald Nash: I cannot assure the Minister that I will be brief and I hope that she and the Cathaoirleach will indulge me. I am pleased to have the opportunity to contribute to this very important debate. I welcome the Minister and her officials who have worked very hard over many years to get to this point. In fairness, I also wish to give the Minister her due credit for sticking with this project. I wondered at times if we would ever get to this point, but we did, and it looks as though there is light at the end of the tunnel.

I thank the Minister for her kind words earlier. Four years ago, I was involved in appointing Dr. Michelle O'Sullivan and her team in the University of Limerick to undertake a study on the prevalence and impact of zero and low-hour contracts in Ireland. We asked that team to develop with us some recommendations as to how this policy area could be best addressed. This initiative was part of a broader, interconnected set of policy interventions that the last Government undertook designed to make work pay and to ensure that people were guaranteed a greater degree of dignity at work. These included the establishment of the Low Pay Commission; increases to the minimum wage, which, as the Minister rightly pointed out, is the second highest minimum wage in the European Union; the establishment of employment regulation orders; new sector employment orders; and, the institution of a new constitutionally robust system within which collective bargaining could take place. These changes positively impacted on around 250,000 or perhaps up to 300,000 workers and these workers continue to benefit from these measures. When we introduce good legal minimum standards and enforce them our economy and society does well. This floor of rights and decency benefits all of us. In the tentative and very early stages of our economic recovery, everyone's focus was on getting people back to work. That was the ultimate objective for everyone. At the height of the economic catastrophe which we hit in this country, some half a million people were out of work. Back in 2011 or

2012 there were many people who might have left work on a Friday or closed the doors of their business on a Friday evening not knowing whether they would have a business or a job to go back to on Monday morning. That targeted focus that the previous Government had on job creation was never about job creation at any price, but about the creation of sustainable jobs where conditions were decent and where the pay rates would allow one not only to exist but to live.

Senator McDowell mentioned earlier how all around us we could see the growth of casual and atypical work. This was not a phenomenon that just grew out of the recession. We could see for many years that the traditional employment model was fraying around the edges. We all knew that some employers did not waste the opportunity presented to them by a good recession to drive down the pay and terms and conditions of workers. I have argued to death with economists about data and trends on casualisation of work in this country over the past 20 years or so. Some do not feel there is a particular problem and argue that the data have remained consistent over the years. That may be the case in relation to the headline figures but the composition has certainly changed and I dispute much of what economists say. Many say that casualisation is a reality as is atypical work but I can never accept that there should be a cohort of people who will be left behind, who would not get the same types of protections and supports that everyone should take for granted in a decent society. We should never be happy that there are people who form a subgroup or sub-cohort of our labour market who are in work environments which are permanently precarious.

People work hard for a living and, as the Minister has said time and again, they are entitled to certainty over their hours and security over their income. There is no doubt this Bill, which has wound its way through the Dáil over the past few months, reflects the bulk of the key recommendations made by the University of Limerick team three years ago. I will not go into the provisions of the Bill in any great detail other than to say I welcome them all. For me, probably the most critical reform is the one that allows the reality of somebody's working hours to be reflected in his or her working and contractual arrangements after a period of time. The reform will have an enormously positive impact in situations where workers find themselves with ten hour or 15 hour contracts but where their work pattern finds them routinely working for much longer.

As the Minister knows, and I have rehearsed these arguments time and again, I have a deep and genuine concern about one aspect of this that I believe has been neglected. The University of Limerick study, as emphasised by my colleague, Senator Higgins, identified the phenomena that we term if-and-when contracts. Since the report and its recommendations were launched in October 2015 I have sounded like a broken record, repeatedly reminding people about the importance of amending legislation to ensure workers on if-and-when contracts are protected. I know the Minister and her officials are convinced this legislation deals comprehensively with that issue but I have a different view. That is why we should take a belt and braces approach and amend the Bill to enable all workers, including those on if-and-when contracts, to have access to the excellent terms and protections contained in this legislation, without any exceptions. Senator Higgins and I would like to work with the Minister and her officials to see if some pragmatic arrangement could be made to reflect my concerns in the Bill and address those issues.

I will conclude by congratulating the Minister again on the work she has done and thank her for sticking with this project. It would have been easy to walk away from it and accept the views of some on the employers' side that there is nothing to see here or there is no problem. Thankfully, she stuck with this project. She has been true to her word and to the programme for Government.

Credit is due also to Senator Ardagh. Fianna Fáil, in its manifesto, assured us that it wanted this area covered in terms of any future government it may participate in or any future arrangement. There is a consensus in this House and across society that we should not have cohorts of workers who are simply left behind and that we should have a labour market model that is fair and respects people's rights at work and ensures that work pays. I want to work with the Minister over the next few weeks to make sure we get this legislation over the line because the best Christmas present we can give workers in precarious work in this country is the protections of this legislation, thus enabling them to have a decent quality of life and to be respected in the workplace.

Acting Chairman (Senator John O'Mahony): Senator Norris has eight minutes.

Senator David Norris: I welcome the Minister and the Bill. I am 74 years old, so I grew up in a different age. Circumstances change very rapidly nowadays. When I was younger and started working, we had an expectation of a lifetime job and a pension at the end. That is all gone now. We have the casualisation of work and we have disposable workers. Everywhere I look in my own university, people are on short-term contracts. It is the same in RTÉ. All these big organisations have them. There has been a campaign, and I think the Minister would agree, stemming from trade union sources, to address this situation. The campaign as I understand it, and I have had quite a lot of emails on this subject, is composed of six target areas that have, by and large, been pretty well met by this legislation. The target areas are as follows: ban zero-hour practices, including exploitative if-and-when contracts; provide workers with secure-hour contracts that reflect the reality of the average weekly hours worked; ensure a maximum look-back period of 12 months or less to calculate the average weekly hours; ensure the maximum width of all band of hours is no greater than five hours per week; and protect workers from victimisation for enforcing their rights under this legislation. All of them have been pretty well addressed. I am not so sure about the last target area about ensuring the legislation is implemented so that current workers can avail of its provisions for hours already completed. I do not think that is contemplated by the Bill and, in fact, I think it is explicitly prohibited.

I said I received a large amount of correspondence and I will read some of it into the record. One is from a highly educated person who is very well informed about this area. He made the following point:

The situation in Ireland currently is not the norm in Europe and is creating a race to the bottom situation. In Germany, for instance, workers can either work full time or in a 'mini-job' of 15 hours a week, with a minimum pay level of 450 euro a week. Those hours can be as flexible as employer and employee like - as long as they are met. I would struggle to find anyone to argue that this has negatively the German economy, its employment levels or its level of female workplace participation - all arguments that critics of this bill have floated.

The next piece of correspondence is more from someone at the coalface, where this legislation really hits. She made a brief statement but it is really indicative. She said:

Please, please pass this Bill as Dunnes are getting away with so much. If the staff asks for a new contract or extra hours they are given less hours the next week. Dunnes will make it harder on workers, for example, when they out on strike. After the strike the workers' hours were lowered until the shortfall was made up of what they lost on most days. Clearly, the workers cannot stand up for themselves for fear of reprisals. I am sorry that I cannot give my name but my son works for Dunnes.

That just shows the degree of victimisation. When one thinks that Dunnes Stores workers, who went out on strike protesting against apartheid and in solidarity with the people in South Africa, who are being victimised, then we really need to listen to that voice from inside Dunnes Stores.

I will talk briefly about the Bill. There are a number of highly important sections, of which section 7 is one. The section amends the 1994 Act by the insertion of a section, which provides that an employer within five days shall give a certain amount of information. That is pretty basic but I say well done to the Minister for putting the provision in legislation for, I think, the first time. Section 7(1A) states:

- (a) the full names of the employer and the employee;
- (b) the address of the employer in the State ...; and
- (c) in the case of a temporary contract of employment, the expected duration thereof-----

Acting Chairman (Senator John O'Mahony): I apologise but I wish to advise that Senator Nash had eight minutes as spokesperson, so Senator Norris is entitled to just five minutes.

Senator David Norris: How many have I had?

Acting Chairman (Senator John O'Mahony): The Senator has one minute left.

Senator David Norris: All right.

Acting Chairman (Senator John O'Mahony): Sorry about that, Senator.

Senator David Norris: Section 7 guarantees a series of things. Section 10 relates to offences. The section is very important as it states that an employer who fails to provide within a reasonable amount of time or who gives wrong information can be penalised. Penalisation, which I would call victimisation, is being outlawed. I say well done to the Minister as the practice should be outlawed. Another section of the Bill directly addresses the prohibition of zero hours.

I am concerned that Deputy O'Dea went to a lot of trouble to provide a very detailed amendment about the incorrect designation of employees as self-employed. His contribution is very detailed and important. Fianna Fáil has withdrawn the amendment but I urge that it is contemplated with a sense of great-----

Acting Chairman (Senator John O'Mahony): Sorry, Senator, if you could conclude, I would appreciate it.

Senator David Norris: I will conclude in a minute.

I have mentioned the possibility of victimisation and there are a couple of other issues. The Minister put a human face on the matter when she said: "There will be no more waiting on a Sunday night for a text as to whether one will be working for one hour or 30 hours". She also mentioned the problems people have in getting mortgages and bank loans. She has put a human face on the issue, which is being properly addressed by the legislation.

I refer again to the false designation of self-employment. The Minister said that "we already have significant and comprehensive provisions in legislation to tackle it" but I do not think so.

Otherwise, why would it continue? Why does it continue to be a significant feature of employment difficulties? Why did the Minister say that this issue has been relegated to a committee for examination, that its work is ongoing and that it is so important? I do not believe for one second that the legislation is at all adequate and I call on the Minister to introduce the kind of legislation that is contemplated in the amendment. I would have voted for the amendment. I am surprised Fianna Fáil has withdrawn it but that is its decision.

Acting Chairman (Senator John O'Mahony): I thank the Senator. Does the Leader want to make a statement?

Senator Jerry Buttimer: I propose that the debate on Second Stage of the Employment (Miscellaneous Provisions) Bill 2017 be adjourned not later than 7.10 p.m., if not previously concluded, to allow Senator Murnane O'Connor to participate and the Minister to reply.

Acting Chairman (Senator John O'Mahony): Is that agreed? Agreed. I call Senator Murnane O'Connor who has five minutes.

Senator Jennifer Murnane O'Connor: I thank the Minister. I and my Fianna Fáil colleagues welcome the Bill. The Minister's contribution was excellent. I will look at this from a different angle. We also see how hard Irish people have worked. If we learned anything from the recession, we learned that. They work so hard and have been upskilling and changing their careers. They are moving forward and getting by as best they can. The great thing about this is that they contribute to the figures that are constantly quoted in respect of the return to almost full employment. However, the type of work they have found is not what we can really call full employment. These famous figures should be scrutinised. In recent years we have seen a new category of employee, the zero-hour employee. This employee has a contract but it is not worth the paper it is written on. Under this contract, the employee is available for work but does not have specific hours of work. It is a formal arrangement where the worker is required to be available for a certain number of hours per week or when required, or a combination of both.

7 o'clock

Employees on zero-hour contracts are protected by the Organisation of Working Time Act 1997 but this does not apply to casual employment. Sometimes they do not feel part of a team. They work just as hard as everyone else in the company. In some cases, they get no holidays, no sick days and no parental leave. This type of work offers them no security, no commitment and certainly no standing that would allow them to seek to obtain mortgages or assistance with paying rent because their wages are averaged over the year and they work so haphazardly that the numbers never quite add up. The Bill has been sorely needed for a very long time. It has already taken too long to get to this House. It has some great aspects. I see the work of my colleague, Deputy O'Dea, in this. It is important to acknowledge that. I welcome anything that would enhance minimum payments to workers who are called in to work only to be sent home. We need to empower the workforce again. We need to see a true reflection of who is working and the types of work they are doing if we are to develop correct policies. We cannot pat ourselves on the back and state that the country is working again if so many workers do not know if they will work next week or next month, or for how long.

There has been an increase in the number of companies hiring people on the basis of bogus self-employment. The Minister is addressing that, which I welcome. These workers do not own their own companies and are not financially in a position to assume risk. They pay their taxes but often seek assistance from charities because they are caught in zero-hour contracts.

They have little other choice. They want to work, so let us put the power back into their hands and get them real contracts. The Minister and others stated that there are very good employers out there and I agree that it is important to recognise them. The Bill is required for those who need it most. I am thinking of families who come into my clinic and who cannot get mortgages because of zero-hour contracts. We need to get this through before Christmas. I congratulate the Minister. The legislation is really positive for the working person.

Minister for Employment Affairs and Social Protection (Deputy Regina Doherty): I thank Senators for their praise for the Bill. We will pass it before Christmas and it will be a collective achievement. I cannot overemphasise that there is no monopoly on wisdom for any political party or for people of any particular persuasion. Everybody in this House and in Dáil Éireann has an opportunity to enhance an idea. This idea was sprouted long years ago and, as Senators have stated, it is in many party manifestos and in speeches made by advocates and union representatives. When the legislation is passed, it will probably be much better than it was when it was first mooted. It will be our collective achievement. I join Senator Nash in acknowledging the officials seated behind me who have worked for the past four years to get the legislation to where it is now. I thank them for their hard work.

Senator David Norris: Hear, hear.

Deputy Regina Doherty: I want to make two brief points before I wrap up. Senator Nash and I differ on some elements of the Bill. I think the if-and-when contracts issue is managed well but he disagrees. I am certainly willing to talk to him and to Senator Higgins in the coming days. If we can reach some accommodation, we certainly will do so. If we cannot, I hope we will not fall out over it. I think it is a good idea to have a review. Most legislation is supposed to be reviewed after 12 months but we are all busy; we move on and the next issue comes around. If there are any unintended pluses or minuses we should have a look at them. Perhaps we can agree on when that should happen and I can introduce it into a speech at some point before the recess.

There are two issues in the context of people declaring themselves to be self-employed, whether they do so willingly or otherwise. First, there is the loss of revenue that we could spend in a variety of ways. I do not know how much that loss is but even if it is only small, it is still money out of the taxpayer's pocket and it is in businesses' pockets instead, where it should not be. Second, we need equalisation across all of our social welfare schemes for self-employed and employed people. It should not matter whether a person creates his or her own job or works for Dunnes Stores. The employment rights should be same and access to social security should be the same. We started to move towards equalising some of the social security schemes. We are now moving to equalise some of the employment rights legislation. Not everybody agrees with me; even people on my side of the House. However, it is my view that the last thing to be done to equalise the situation is to remove the reason people declare themselves as being self-employed. If we can equalise that last platform, then there are no advantages any more to being self-employed or employed, other than the ability to direct one's own work, which comes with being truly self-employed. That is what self-employment should actually be all about. It is the creation of work and the ability to direct it. If the monetary difference was taken out of the equation, we would see that issue being addressed with a bit of a sledgehammer. That is for the future. We are going to address it with the Joint Committee on Employment Affairs and Social Protection and will find other ways of approaching it. I look forward to making my contribution before the committee.

20 November 2018

This is significant legislation. It has been described as once in a generation. Senator Murnane O'Connor stated that people are watching tonight who are waiting in expectation to be able to ask their employers to put them on a particular band of hours reflective of the work they have done in the past 12 months. It will be a collective achievement and a job really well done by this Oireachtas if we can do that before Christmas.

Senator David Norris: Hear, hear.

Question put and agreed to.

Acting Chairman (Senator Gerry Horkan): When is it proposed to take Committee Stage?

Senator Ray Butler: Next Tuesday.

Committee Stage ordered for Tuesday, 27 November 2018.

Judicial Appointments Commission Bill 2017: Committee Stage (Resumed)

SECTION 31

Question again proposed: "That section 31 stand part of the Bill."

Acting Chairman (Senator Gerry Horkan): When the debate adjourned on 15 November, we were discussing section 31 and Senator McDowell was in possession. I invite the Senator to continue.

Senator Michael McDowell: I have said a fair amount about section 31. I do not propose to say much more. I will outline the problem I see with the section as currently drafted. What kind of person would take a job of such seniority for five years? It seems tailor-made to exclude people who are not in the public sector or in a position to take secondment from another form of employment. There are very few people wandering around who are qualified to take a job of this kind. I do not understand why the maximum employment period is ten years. If a person aged 52 is suitable to be appointed as director, why can they not serve out their period in the role until they are 65? Why are we bringing in this constraint? The commission might be totally satisfied with the person but will have to dispense with their services after ten years. I can see that two terms as a member of a board is enough and that, in many cases, certain positions require freshness after a certain period but this is different. Is this director going to be a civil servant? A member of staff is referred to as a civil servant in section 30(6) so if the director is a civil servant, why would he or she have to go after ten years? What commonsense objective is served by introducing such an artificial limit of the time the director can serve in office?

Section 30 states that there shall be attached to the commission an office to be known as the judicial appointments commission office, which shall assist the commission in the performance of its functions. With the consent of the Minister given the approval of the Minister for Public Expenditure and Reform, the commission may appoint such and so many persons to be members of the staff of the office as it may determine. However, there is a different provision in section 31(1), which states that the commission shall, following a selection process held by the

Public Appointments Service, PAS, appoint a person to be a director. The strange thing is that the person in question is not covered by the terms of the provisions of section 30(6), where an employee is a civil servant. That is my reading of the Bill and I would be glad if the Minister would elaborate on this. If the appointment provision is different from that for staff members under section 30(4), it seems to follow that the director will not be a member of staff and will not, therefore, be a civil servant. I would like some clarity on this because it is problematical. Is the director a member of staff appointed under subsection (4)? If he or she is appointed under subsection (4), are the provisions of section 31 in substitution for, or in refinement of, the provisions of section 30 as they relate to staff? Will the director be a civil servant? Can the Minister say precisely why, if somebody is appointed to the job of director aged 52, they should be out of the job aged 62?

Senator David Norris: It will be at 57 years, unless they get an extension.

Senator Michael McDowell: What is so special about this job? There are all sorts of positions in the Civil Service and many people can remain in the public service in similar circumstances. Why has this job been selected for an arbitrary maximum duration of ten years? I do not see the logic of it. I presume the Minister will have notes from the drafting stage of the Bill, which will justify a maximum period. Supposing a man or woman was appointed to this job aged 52 and was doing a stellar job directing this commission, notwithstanding the fact that I do not approve of it, why should they be given the boot aged 62? Why would the Oireachtas, in its wisdom, decide they had to go aged 62? No policy reason has been advanced for such an arbitrary provision. It is unfair on somebody who gets the job and it seems to be designed to make it almost impossible for somebody who is not on secondment from the Civil Service, or some other employment to which they can return afterwards. I find that to be indefensible.

Senator David Norris: This discussion flows on naturally from our discussion on the previous matter, the Employment (Miscellaneous Provisions) Bill 2017. Sections 31 and 32 go together. Section 31(1) states that the commission shall, following a selection process held by the PAS, appoint a person to be the director. It refers to “a” selection process, which is not terribly specific. It could be any kind of selection process and it would be worthwhile to include some information as to what kind of process it will be. I assume the Minister means it to be a normal, run-of-the-mill selection process such as the PAS so excellently conducts but it does not state this. The whole business of the selection process is vitiated by section 32, which refers to the functions of the director, stating: “(1) The Director shall manage and control generally the staff, administration and business of the Office.” That does not tell us very much and it tells us nothing about policy. How does this help the commission in researching and trying to find the correct person? The terms of employment are vague. Section 32(2) states; “The Director shall be responsible to the Commission for the performance of his or her functions.” That does not give an appointments commission much to go on if it is looking for a particular employee. It is far too vague.

I share Senator McDowell’s reservations about the five-year term. It is relaxed slightly by the provision that they can be reappointed by the commission but it seems otherwise pretty firm and it also states that they shall not hold office for a period the aggregate of which exceeds ten years. Again, I would like to hear the Minister’s rationale for an appointment term of only five years, which may be extended to double the term to ten years. I really do not see the logic in that.

Having spoken about logic, I am going to talk a bit about the language in section 31(3). I

would have thought it is a little elevated and it certainly does not help the common reader, the ordinary Joe who is trying to read this Bill. Subsection (3) states:

Subject to *subsection (4)*, a Director whose term of office expires by the efflux of time shall be eligible for reappointment by the Commission.

The efflux of time, how Miltonic; why was it not worded “the passage of time”? I do not see why we are using this kind of language. I would be interested in the Minister’s reply.

Minister for Justice and Equality (Deputy Charles Flanagan): I will not elaborate on issues that were the subject matter of discussion on the last occasion when dealing with section 31. The section shall be put as is.

Senator Michael McDowell: That attitude simply will not do. I have asked reasonable questions. What is the Minister’s rationale for the term of ten years? I have asked a reasonable question and I am entitled to a reasonable answer. If the Minister thinks that he can avoid giving me a reasonable answer to that question and say he will see his way to bludgeon this through, without answering simple questions which are legitimate, then there is only one answer and that is to have ----

Senator David Norris: I do not mean to interrupt Senator McDowell but I am very sorry to see that there are so few Members in the House. I wonder should there not be more? May I call a quorum?

Notice taken that 12 Members were not present; House counted and 12 Members being present,

Deputy Charles Flanagan: I wish to respond to Senator Norris. Senator Norris is correct that the selection process shall be undertaken by the Public Appointments Service, PAS. I now propose that the question be put.

Acting Chairman (Senator Gerry Horkan): In terms of responding to Senator McDowell on the question of the term of ten years, does the Minister believe he has dealt with the issue already?

Senator Michael McDowell: With the greatest respect, I do not remember the Minister explaining the rationale for a ten year maximum limit. If he has not done so at any point until now, I am asking him, as Senator Norris asked him, to do so.

Deputy Charles Flanagan: I am not going to be drawn into the Senator’s games. He ran out of the Chamber laughing as though to waste another ten minutes of the Seanad’s time.

Acting Chairman (Senator Gerry Horkan): It was five minutes.

Senator Michael McDowell: I did not call a quorum. I was asking at the time for an explanation from the Minister but he was indicating in a churlish and bad tempered way that he was not going to answer my question. I now repeat the question, because we will have to have the Fine Gael Senators back up to hear it, if necessary,

Deputy Charles Flanagan: No.

Senator Michael McDowell: They should watch the Minister behaving in the way he is behaving this evening.

Senator David Norris: Hear, hear.

Deputy Charles Flanagan: I answered questions for 42 hours.

Senator Michael McDowell: Sorry Minister, we will deal with the 42 hours -----

Senator David Norris: The Minister did not do so for 42 hours. That is nonsense.

Senator Michael McDowell: May I say that each section in this debate has taken less than one hour to deal with on Committee Stage? That is a fact. There has not been an excessive amount of time spent on it and there will not be an excessive amount of time spent on it. What the Minister seems to be concerned about - and let us be clear about this - is that he cannot bulldoze this legislation through.

Deputy Charles Flanagan: On the contrary, there is no question of bulldozing it.

Senator Michael McDowell: Yes, there is.

Deputy Charles Flanagan: It is quite the opposite. It is reverse engine.

Senator Michael McDowell: I wish to inform the Minister that no less a newspaper than *The Irish Times* published an editorial last Saturday which advised him to scrap the ill-advised Judicial Appointments Commission Bill, which is being foisted upon the country at the whim of the Minister for Transport, Tourism and Sport, Deputy Ross. It went on to say the Bill is bogged down in the Seanad because of a rearguard action led by the former Attorney General, Senator McDowell, but I am not on my own on this.

Senator David Norris: No, the Senator is not.

Senator Michael McDowell: A great majority of Senators are opposed to the Bill, and a great majority of Fine Gael Members are being forced to vote it through against their own judgment by a party Whip imposed on them from outside. Let us be clear: a great majority of Senators think this is a bad Bill which should not be before us. That is the situation.

Deputy Charles Flanagan: The Senator has simply no evidence of that.

Senator Michael McDowell: I have spoken to many of the Minister's colleagues and I am quite confident that is the case.

Deputy Charles Flanagan: The Senator has no evidence for that certainty.

Senator Michael McDowell: If I have no evidence, is it not strange that *The Irish Times* in the same editorial wrote that it is an open secret that many Fine Gael Members have serious concerns about the Bill but feel-----

Deputy Charles Flanagan: The Senator had said "a majority".

Senator Michael McDowell: -----but feel bound by the commitment to the Minister for Transport, Tourism and Sport, Deputy Ross, which was included in the programme for Government. It is a majority.

Deputy Charles Flanagan: "A majority" is different from "many".

Senator Michael McDowell: We will call a quorum in a moment and I will ask one Fine

Gael Senator who believes we should have this Bill rather than the present system to stand up and be counted. None of them has spoken in favour of the Bill on Committee Stage. Not one of them has said the Bill is worthwhile. Let us remember that before we make charges of obstruction. Not one Fine Gael Senator has stood up and said the Bill makes sense.

Deputy Charles Flanagan: The Senator said it was “bogged down” in the Seanad. Why is it bogged down in the Seanad? It is bogged down because of the tactics employed by the Senator and his comrades.

Senator David Norris: It is bogged down by people who are entirely within their rights to use all available parliamentary means to scrutinise deeply flawed legislation. *The Irish Times* editorial will explain it to the Minister.

Acting Chairman (Senator Gerry Horkan): We are dealing with section 31 but I hope the Minister will be able to respond to the Senators’ valid queries.

Senator Michael McDowell: I asked politely about two matters, both of which are capable of being answered. Is the director a member of staff or not? If not, is he or she a civil servant, and where is the provision which makes the director a civil servant if he or she is not a member of staff?

I also asked for the rationale for somebody appointed to the position at the age of 52 being required to resign at the age of 62. I would like some indication on both of those things. If the whole Fine Gael Party must spend all night listening to the answers not being delivered, so be it. I am not obstructing. I am asking simple questions, which I am entitled to do as a legislator. What is the rationale for the provision for a maximum of ten years?

I have entitlements as an elected Senator. The Minister may laugh at the concept of an “elected Senator”, but I have more first preferences than some Deputies, which I want to say before we get carried away. I was elected here with more first preferences.

Senator David Norris: So was I. I topped the poll.

Senator Michael McDowell: I am just making the point that I am entitled, as somebody elected to this House under the Constitution with more first preferences than some Deputies, to get a civil answer to a civil question.

Deputy Charles Flanagan: On the Senator’s question, the director may or may not be a civil servant, depending on the process.

Senator Victor Boyhan: My colleague, Senator McDowell, made some valid arguments. I take some offence from the Minister’s remark about Senator McDowell and his “comrades” frustrating a process. No one is here to frustrate a process. The Minister is here to discuss legislation. His leader, the Taoiseach, Deputy Varadkar, came to the House once and once only since he became leader, and went to great lengths to tell us, rightly so, that our principal focus must be to improve, polish up and work on legislation. He impressed upon us to stay focused on legislation. He said the role and function of the Upper House, Seanad Éireann, is to home in on, work on and improve legislation in co-operation with other arms of the Legislature, through the Minister with key responsibility for a given matter.

The Minister may not like the intensity of the scrutiny, or he may be under considerable pressure from other individuals or those who are party to these proceedings, but the bottom

line is we are doing what is right and what we are elected to do, which is to play a meaningful role in Seanad Éireann on the scrutiny of legislation, of which this is an important aspect. So be it if Fine Gael Senators cannot be here for whatever reasons, many of which will be valid, but we are here. We are here because we are interested and committed, and we are asking hard questions which the Minister must answer. We should not do politics by having people jumping up and down the stairs, but so be it if we must call a quorum. The Minister may stand up and say we are not dealing with it because it was dealt with before, or that he has been here for more than 40 hours, but the Minister will be taken through the Bill section by section. We may decide later in these proceedings today or in the next few days to defer some of this or not to delay it from moving to the next Stage. That is also our right and prerogative, which I know the Minister would accept. There are many ways of teasing out and prolonging a process if necessary, but the Minister must accept in the spirit of the people here that they are here to tease out this legislation.

On Senator McDowell's point, I have spoken directly to members of Fine Gael and other parties who have serious concerns about this legislation. It is the nature of a large political movement and party that people will not agree on everything. There is a commitment in the programme for Government, however, and the Minister for Transport, Tourism and Sport, Deputy Ross, is committed to this. I do not wish to personalise the matter because I am not in the business of personalising politics, but the bottom line is that people are under pressure and want to deliver. There is a common belief that there will be an election in two or three months and, therefore, people must build Garda stations here, community centres there, health facilities somewhere else and deliver on all the promises, but they will not deliver on all the promises because the promises were not always right, correct or suitable to proceed with.

Our function as Senators in regard to this legislation is to tease it out with the Minister, the principal Minister with responsibility in this area, who has much knowledge of the legal profession. He is well versed and trained in this area and, therefore, it should not be difficult for him to respond. He should show his respect for the House, that is, not for Senator McDowell, Senator Boyhan or anybody else. He should answer the questions that were put because the more he delays, the more issues people will have. This process may take many more hours but what is the rush?

I also read *The Irish Times* editorial on the Bill. No one circulated it to me but I went down to the Library, got a copy for myself and I read it. It was impressive journalism, which discusses the mess that is the Bill. I am sorry if the Minister is caught in the middle of the matter and is being forced to deliver this for a particular purpose or a particular Minister, but we would fail in our job if we did not tease out each and every issue with the Bill. I appeal to the Minister to respond to the simple questions which Senator McDowell put to him.

Acting Chairman (Senator Gerry Horkan): I am conscious that we are dealing with section 31 but I am also conscious that the Senators are responding in frustration because they are not getting responses to the questions they asked. Senators McDowell, Clifford-Lee and Norris are to speak on section 31, ideally, and I will then ask the Minister if he has a response.

Senator Catherine Noone: Not ideally.

Senator Michael McDowell: I will simplify the question again.

Senator David Norris: What is Senator Noone doing here?

Senator Michael McDowell: It seems clear to me that the director is not included in the phrase “member of staff” for the purposes of section 30(6). I asked the Minister whether somebody, when he or she becomes director under section 31, would *ipso facto* be a civil servant. If the person would not be a civil servant, why not, unlike the other members of the office’s staff? It is a simple question and if there is an answer, it will also be simple. The second point on which I want an explanation from the Minister is why somebody appointed to this job at the age of 52 has to be excluded from office after ten years, at the age of 62, if his or her service is perfectly satisfactory, regardless of whether he or she is a civil servant. I am entitled to answers to those two simple points.

Senator Lorraine Clifford-Lee: I support Senator Boyhan. He referred to this Bill as a mess. One might also refer to it as a dog’s dinner. Other people have done so. This House has a wealth of experience that the Lower House does not possess. We have a former Attorney General and Minister for Justice and Equality. Senator Norris has substantial experience in the House. We are much the better for having somebody with his experience. Senator Bacik has academic expertise. If they want to contribute, tease out the provisions of the Bill and make it better, they should be afforded every opportunity to do so. I hope the Minister will co-operate with us.

Senator David Norris: The Minister asked about the amount of time being spent on the Bill. I can justify it very simply and clearly using two points from the editorial in *The Irish Times*, which states, “Ross insists that this is designed to remove political interference [his well-vaunted cronyism] from the appointment of judges but it will do no such thing.”

Deputy Charles Flanagan: I did not ask a question. I do not ask questions.

Senator David Norris: The Minister queried.

Deputy Charles Flanagan: I did not ask a question.

Senator David Norris: The Minister queried the amount of time.

Deputy Charles Flanagan: No. I commented on the amount of time.

Senator David Norris: The Minister queried it. I have some nodding acquaintance with English so I know what I am talking about. He queried it.

The editorial also states, “It will simply mean that the recommendations for appointment to the judiciary will be made by a body which does not have the necessary expertise or experience to make informed recommendations.” That makes it an absolute obligation on this House to go through the Bill with a fine-tooth comb. As the editorial, which appeared in one of our most influential newspapers, states, it does exactly the reverse of what the Government purports it will do. Let me give the second reason we should go into the Bill in so much detail. The editorial states authoritatively, “this Bill was drafted on the basis of no serious research, analysis or international comparisons.”

The first reason is that the Bill will do exactly the reverse of what it sets out to do. That means this House has an absolute obligation to hold it up as much as it can, scrutinise it and expose it to the most ruthless dissection. The second reason is that the Bill was produced on the basis of “no serious research, analysis or international comparisons”. The editorial suggests that the Minister’s Cabinet colleagues should find their courage and tell him to take the Bill

back to the drawing board, whether or not it means the resignation of Senator Ross.

Acting Chairman (Senator Gerry Horkan): The Minister, Deputy Ross, even.

Senator David Norris: Is he a Minister now?

Acting Chairman (Senator Gerry Horkan): He is not a Senator.

Senator David Norris: That is where all the trouble comes from.

Acting Chairman (Senator Gerry Horkan): He is not a Senator.

Senator David Norris: Everybody diminishes as life goes on. He is in the Dáil.

Acting Chairman (Senator Gerry Horkan): I thank Senator Norris. I believe he has concluded. Does the Minister want to respond to any of the queries on section 31?

Deputy Charles Flanagan: In response to the question on whether the director will be a civil servant, I repeat that the director may not necessarily be a civil servant. Therefore, the director may not necessarily be covered by the already-passed section 36. The director may be a civil servant or the director may not be a civil servant. This will depend on the Public Appointments Service process, as referred to by Senator Norris. I expect it will in the normal course of events be organised by the Public Appointments Service.

The second point Senator McDowell raised was in respect of the term of appointment. In the normal course of events, there will be a term of appointment. It can be five years, seven years or six years. The rationale chosen in respect of this is in accordance with the original general scheme of the Bill, which was first circulated in 2016. It refers to a renewable period of five years. If Senators are not happy with that, they have a course of action open to them. In the circumstances, the balance is deemed to be in favour of a five-year term which can be renewed.

Senator Michael McDowell: With respect, I asked whether a person who occupies the position of director will, *ipso facto*, be a civil servant. I am getting a different answer, namely, that somebody could be a civil servant when appointed or might not be, depending on what the Public Appointments Service-----

Acting Chairman (Senator Gerry Horkan): Was the Senator's question on whether a person will become a civil servant if he or she is not already a civil servant?

Senator Michael McDowell: Does a person become a civil servant when appointed? That is the first question.

Acting Chairman (Senator Gerry Horkan): If he or she is not already a civil servant.

Senator Michael McDowell: My second question is on why, for some policy reason, a person appointed to the position at the age of 52 should be told at the age of 62 that his or her services are finally dispensed with and that he or she may not carry out the function any longer. I have not heard one solitary reason that should be the case. Saying it was in the Bill as drafted does not help us at all because much of it was drafted before the Minister took office. I am asking the very simple question as to what possible reason there is to say to a man or woman appointed at the age of 52 that he or she must quit at 62 - despite the fact that he or she may have been doing a brilliant job - because the Legislature, at the behest of the Minister for Justice and Equality, said in 2018 that he she must quit the post on having done ten years. I am not getting

an answer to either of those questions.

Acting Chairman (Senator Gerry Horkan): Does the Minister wish to respond to the last point?

Deputy Charles Flanagan: I have given a response. If Senators wish to change it, they may do so. In the circumstances, it is not unusual for an appointment to be for a period of five years. At the end of a period of five years, it is up to the board to renew the appointment or otherwise. Whether somebody comes to the end of his or her tenure at 62 or 64 is a matter of given circumstances. Just because somebody has done ten years and reaches the age of 62, Senator McDowell would like to give him or her an automatic opportunity for renewal. Having two terms, each of five years, is considered appropriate in the circumstances.

Senator Michael McDowell: That is not the case. If somebody who is not a civil servant is appointed under section 31 as director, and if it is conceded — it has not yet been — that he will not become a civil servant by virtue of such an appointment, then the question arises as to whether such a person should perform properly for two terms, at a maximum, up to the age of 62 and then be told, unlike any civil servant in the State, that his term is over and he is no longer eligible to hold office. That is the question I am putting. The Minister knows full well that this is an indefensible proposition. First, it is indefensible that the staff should be civil servants but not the director. Second, it is indefensible that somebody who is in charge of all the staff should not be a civil servant *ex officio* - by holding the office. Third, there is no reason that the Legislature should say to a person who holds the position and discharges the functions satisfactorily for ten years that he or she must leave at the age of 62. No reason is being offered for any of this. No rationale is being offered. If that is the way this House, which is supposed to be the revising Chamber and which is supposed to ask why legislation takes the form it does, is going to be treated, that is contemptuous. It is simply contemptuous of the House not to offer any further explanation. I remind the Minister that so far we have spent less than one hour on each section of the Bill. It is not as if the Bill is not important. The Minister claimed many times himself that it was important. I say it is not important because I say it is going to damage the quality of our Judiciary. There are many other provisions of the Bill which are far more damaging than the proposal to make the director float in space as a non-civil servant with no job security when he or she comes to the end of the first or second term, having performed satisfactorily. It is a major fault in the legislation and no defence is being offered to it. It is indefensible as a proposition.

I ask the Minister to think of the common sense of this. If a clever man or woman applies for appointment to this job through the Public Appointments Service at the age of 52 and serves one term, he or she will have reached 57. If the commission considers that person to be the bee's knees and is very happy to reappoint him or her to another term, it will bring him or her to the age of 62. The House is being asked to insert into the terms of that person's appointment the proposition that he or she is denied civil servant status and must drop the job at the age of 62 with no pension entitlements or anything like that. It is scandalous and indefensible. The Minister can see fully why anybody would have the gravest difficulty accepting the section in its current form.

The Minister has the advantage of having advisors here and a Department which crafted subsection (4) to introduce this maximum ten-year period. There must be a note somewhere in the Department which says why that is being done. The legislative intent and the policy underlying it lie somewhere within the Department of Justice and Equality, but the Minister is deciding to withhold it from the House and refusing to tell us the basis on which the ten-year

limit has been imposed. I find that very distressing. I served in the same position the Minister now holds and moved many important Bills in the Senate in my time. I never told a reasonable questioner in this House, “That’s the why”, when asked for a justification of some provision of a Bill I was moving. No Minister should ask the House to accept that situation.

Senator Paddy Burke: I listened attentively to Senator McDowell but I think the same thing applies in local government where county managers can only serve for ten years. They could enter the system at 45, 48 or 50 years of age and be finished in their late 50s or early 60s. It is exactly the same situation.

Senator Michael McDowell: Are they civil servants?

Senator Paddy Burke: They are in the system.

Senator Michael McDowell: If they are civil servants, that is one thing.

Senator Paddy Burke: They are public servants. That was brought in while Senator McDowell was a Minister. He might not have been the Minister responsible but he was a member of the Government when it was brought in.

Senator Martin Conway: There is collective responsibility in Cabinet.

Senator Michael McDowell: The question about county managers is whether they are civil servants.

Senator Paddy Burke: They are public servants.

Senator Michael McDowell: If they are public servants, is the director a public servant?

Senator David Norris: They are employed by the local authority.

Senator Martin Conway: Local authority staff are public servants not civil servants.

Acting Chairman (Senator Gerry Horkan): Is Senator McDowell asking whether this person is a civil servant?

Senator David Norris: That is exactly what he said.

Acting Chairman (Senator Gerry Horkan): This is for clarification, Senator Norris, for the benefit of the Minister and everyone else.

Senator Michael McDowell: I am querying how it can possibly be that every member of staff is a civil servant while the man or woman who controls and directs them is not. I am querying why it is that such a person should after ten years cease to have any job at all. If he or she is not a civil servant, what does he or she do at the end of the ten years? Does such a person just walk out the door and say “Thank you”?

Senator Paddy Burke: It is the same with county managers.

Senator David Norris: He or she becomes a county manager.

Acting Chairman (Senator Gerry Horkan): Does the Minister want to address the civil servant and public servant issue?

Deputy Charles Flanagan: This is not an unusual appointment. Senator McDowell says it is a scandal that this person may be required to leave the job after a period of ten years. This is not unusual either within the public service or the private sector.

Senator Michael McDowell: It has nothing to do with the private sector.

Deputy Charles Flanagan: It is reasonable to have a term of five years, which is renewable. I refer Senator McDowell to section 31(5) which provides that the terms and conditions of holding office, superannuation and the contract will be determined by the commission in the normal course of events. I do not share Senator McDowell's view that this is a scandal, as he describes it - on the contrary.

Senator Michael McDowell: It is remarkable. I will remove the word "scandal" and go to the word "remarkable". It is remarkable that the staff the director will be in charge of will be civil servants under section 30(6) whereas the director will not, even though he or she will be appointed by the commission following a Public Appointments Service selection process. I have had no good reason advanced to me as to why he or she should not have civil servant status. I ask again for some indication as to why a satisfactory director has to go having served ten years. To say that other people are in this position does not answer that question. Other people are not the director of an office full of civil servants. I want to know what the policy is that underlies the proposition that the person could not do more than ten years and I am not receiving an answer.

Senator David Norris: The Minister referred to subsection (5) and said the director shall hold office upon and subject to such terms and conditions, including terms and conditions relating to remuneration, allowances and superannuation, as may be determined by the commission with the approval of the Minister, given with the consent of the Minister for Public Expenditure and Reform. I am not sure how much superannuation there would be if one was only there for five years. It is rather a long and drawn out effort there because one step involves the director holding office under various terms determined by the commission. One then needs the approval of the Minister and then one has to have the consent of the Minister for Public Expenditure and Reform. How many hurdles does one have to get over for this simple business of determining the terms and conditions? There are three. The commission decides it and is second guessed by the Minister for Justice and Equality and third-guessed by the Minister for Public Expenditure and Reform.

Senator Martin Conway: There are checks and balances.

Senator David Norris: Bells and whistles.

Senator Michael McDowell: What superannuation would one get for five years' service?

Senator David Norris: That is the point I made.

Senator Michael McDowell: Exactly.

Senator David Norris: Exactly.

Senator Michael McDowell: In the real world where we live, is the Department of Public Expenditure and Reform going to hand out a full pension to someone who has done five years? It is not. As such, what kind of pension will the person get? I find this unconvincing. I continue to ask the Minister and I continue to encounter a stone wall as to why there is a maximum term

of ten years in this position.

Senator Martin Conway: On the maximum term, colleagues have mentioned local authorities.

CEOs in local authorities are appointed for seven years and they can apply for a three-year extension. Therefore, the norm within that type of environment is ten years. In terms of individuals doing a job, one gets the best out of them for ten years.

8 o'clock

Senator David Norris: The norm is not ten years here, it is the exception. Five years is the norm, ten years is the exception.

Senator Martin Conway: No, the norm-----

Acting Chairman (Senator Gerry Horkan): I ask Members to address their remarks through the Chair.

Senator Martin Conway: The norm within local authorities is seven years for the CEO. Even the President, Michael D. Higgins, the Senator's good colleague, does a seven-year term and they can apply then for a three-year extension.

Senator David Norris: He cannot do so. He has had his extension.

Senator Martin Conway: CEOs in local authorities can apply for a three-year extension, if Senator Norris was listening.

Senator David Norris: I was listening intently.

Senator Martin Conway: I hope the Senator is. That is a point of clarification.

Senator David Norris: I thank Senator Conway very much.

Acting Chairman (Senator Gerry Horkan): There are a couple of points which I think Senator McDowell feels have not been answered. I am not sure if the Minister wishes to answer them. If he is in a position to do so perhaps the Minister might give the Senator whatever answer he has in terms of why only ten years.

Deputy Charles Flanagan: It is ten years because it is deemed to be good practice in the circumstances. Not unusually they are in the public or private sector.

Acting Chairman (Senator Gerry Horkan): Or civil servants?

Senator Michael McDowell: If that is the explanation that is forthcoming so be it. I find this section entirely unsatisfactory.

Acting Chairman (Senator Gerry Horkan): Does the Senator want an answer on the question of superannuation?

Deputy Charles Flanagan: I do not think it is reasonable that at this Stage of the legislation we should be in a position to put figures on allowances or superannuation. I say to Senator Norris that it is entirely appropriate in similar legislation that these would be issues to be determined by the commission with the approval of the Minister and, of course, the involvement

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of the Minister for Public Expenditure and Reform. I point to the Legal Services Regulatory Authority, for one.

Question put.

The Committee divided by electronic means.

Senator Victor Boyhan: Under Standing Order 62(3)(b) I request that the division be taken again other than by electronic means.

Question again put:

The Committee divided: Tá, 25; Níl, 10.	
Tá	Níl
Burke, Colm.	Boyhan, Victor.
Burke, Paddy.	Clifford-Lee, Lorraine.
Butler, Ray.	Daly, Mark.
Buttimer, Jerry.	Daly, Paul.
Byrne, Maria.	Gallagher, Robbie.
Coghlan, Paul.	Horkan, Gerry.
Conway-Walsh, Rose.	Leyden, Terry.
Conway, Martin.	McDowell, Michael.
Devine, Máire.	Norris, David.
Feighan, Frank.	Wilson, Diarmuid.
Gavan, Paul.	
Hopkins, Maura.	
Lawlor, Anthony.	
Lombard, Tim.	
Mac Lochlainn, Pádraig.	
McFadden, Gabrielle.	
Mulherin, Michelle.	
Noone, Catherine.	
O'Donnell, Kieran.	
O'Mahony, John.	
O'Reilly, Joe.	
Ó Donnghaile, Niall.	
Reilly, James.	
Richmond, Neale.	
Warfield, Fintan.	

Tellers: Tá, Senators Gabrielle McFadden and John O'Mahony; Níl, Senators Victor Boyhan and Michael McDowell.

Question declared carried.

SECTION 32

Question proposed: "That section 32 stand part of the Bill."

An Cathaoirleach: Is the section agreed?

Senator David Norris: No.

An Cathaoirleach: Does the Senator wish to speak on the section?

Senator David Norris: No. I just do not like it.

Senator Michael McDowell: If I may comment briefly on the section as I do not wish to waste time. This section is the third section in Part 5 of the Bill. I have set out at some considerable length, and I will not repeat myself now, my entire objection to the wasteful expenditure involved in the establishment of the judicial appointments commission and its office. Therefore, consistent with that position I am opposing section 32.

Senator David Norris: I am opposing the section on very much the same grounds. I am also opposing it on the grounds I have already set out. I will not repeat myself but there is nothing here about policy. It is very much a damp squib.

An Cathaoirleach: Ciúnas. If Members wish to speak could they please leave the Chamber?

Senator David Norris: I think they are all going to the Cork Chamber of Commerce dinner.

An Cathaoirleach: I am sure not all of them are.

Senator David Norris: I think all of them. Look at how beautifully they are all dressed up.

Deputy Charles Flanagan: This is a standard provision. There is nothing new. It is in accordance with many precedents in many pieces of legislation over the past number of years, including the Legal Services Regulation Act, the Property Services (Regulation) Act and the Human Rights and Equality Commission Act. I am not sure where the Senator is coming from.

Senator Michael McDowell: The Legal Services Regulatory Authority and Property Registration Authority are institutions which are performing a useful function. We have a Judicial Appointments Advisory Board which costs practically nothing. The Minister's Government has been making excellent appointments to the Bench without the assistance of a commission of this kind. We do not need this commission and every cent spent on it is wasted.

Question put:

The Committee divided: Tá, 26; Níl, 11.	
Tá	Níl
Burke, Colm.	Boyhan, Victor.
Burke, Paddy.	Clifford-Lee, Lorraine.
Butler, Ray.	Daly, Mark.
Buttimer, Jerry.	Daly, Paul.
Byrne, Maria.	Gallagher, Robbie.
Coghlan, Paul.	Horkan, Gerry.
Conway-Walsh, Rose.	Lawless, Billy.

Conway, Martin.	Leyden, Terry.
Devine, Máire.	McDowell, Michael.
Feighan, Frank.	Mullen, Rónán.
Gavan, Paul.	Norris, David.
Hopkins, Maura.	
Lawlor, Anthony.	
Lombard, Tim.	
Mac Lochlainn, Pádraig.	
McFadden, Gabrielle.	
Mulherin, Michelle.	
Noone, Catherine.	
O'Donnell, Kieran.	
O'Mahony, John.	
O'Reilly, Joe.	
Ó Domhnaill, Brian.	
Ó Donnghaile, Niall.	
Reilly, James.	
Richmond, Neale.	
Warfield, Fintan.	

Tellers: Tá, Senators Gabrielle McFadden and John O'Mahony; Níl, Senators Victor Boyhan and Michael McDowell.

Question declared carried.

SECTION 33

An Cathaoirleach: Amendments Nos. 72 to 77, inclusive, are related. Amendment No. 75 is a physical alternative to No. 74. Amendments Nos. 72 to 77, inclusive, may be discussed together by agreement. Is that agreed? Agreed. Senator Bacik has given written consent to Senator Norris to move amendment No. 72.

Senator David Norris: I move amendment No. 72:

In page 23, lines 6 to 17, to delete all words from and including “(1) Section 5” in line 6 down to and including line 17 and substitute the following:

“(1) Section 5 (amended by section 11 of the Court of Appeal Act 2014) of the Act of 1961 is amended by the insertion of the following after subsection (7):

“(8) Section 45A (inserted by section 33(4) of the Judicial Appointments Commission Act 2018) provides an additional basis for qualification for appointment as a judge of the Supreme Court, the Court of Appeal or the High Court.”.”.

I am moving this with Senator Bacik's consent which I obtained from her an hour ago.

Senator Martin Conway: Where is she?

Senator David Norris: I do not have the slightest idea but I can telephone her and ask her

if the Senator wishes.

An Cathaoirleach: Senator Bacik's whereabouts is not a matter for discussion.

Senator David Norris: I refer to the amendment which states:

In page 23, lines 6 to 17, to delete all words from and including "(1) Section 5" in line 6 down to and including line 17 and substitute the following:

"(1) Section 5 (amended by section 11 of the Court of Appeal Act 2014) of the Act of 1961 is amended by the insertion of the following after subsection (7):

"(8) Section 45A (inserted by section 33(4) of the Judicial Appointments Commission Act 2018) provides an additional basis for qualification for appointment-----

An Cathaoirleach: The Senator does not have to go to all the trouble of reading out the amendment. The Minister is well aware of what it contains.

Senator David Norris: -----"as a judge of the Supreme Court, the Court of Appeal or the High Court."".

I want to ask something of the Minister or his advisers because I have just been jumped into this and I was not anticipating it. I am afraid I do not know what "Section 45A (inserted by section 33(4) of the Judicial Appointments Commission Act 2018)" does. It says it: "provides an additional basis for qualification for appointment as a judge of the Supreme Court, the Court of Appeal" and so on but I am not sure what it is.

An Cathaoirleach: It is not the Minister's job to explain the amendment.

Senator David Norris: No, but he might do so if he is feeling helpful.

An Cathaoirleach: The Senator moved the amendment so he may speak to it.

Senator David Norris: I will sit down and see if the Minister is prepared to explain it because it is just a question of information which would be helpful. I am not sure if the Minister knows. I will then continue if I may do so. Is that all right?

An Cathaoirleach: Yes. I call Senator McDowell.

Senator Michael McDowell: I will assist Senator Norris.

Senator David Norris: There is assistance from all quarters.

Senator Michael McDowell: Section 33 contains a number of separate proposals, one of which is to allow for the amendment of section 5 of the 1961 Act, which is either the Courts (Supplemental Provisions) Act, 1961 or the Courts (Establishment and Constitution) Act, 1961, to provide that: "A judge of the District Court who has served as such a judge for a period of not less than 2 years shall be qualified for appointment as a judge of the High Court." Then there is a reference to section 33(4) of this Bill which inserts a new section 45A. If the Senator goes down to the bottom of page 23 he will see a subsection 4, which is an insertion in the 1961 Act which is the Act governing eligibility for appointment to the bench.

Senator David Norris: Is that the bit with the heading "Qualification of certain legal academics"?

Senator Michael McDowell: Exactly. A new section will be inserted stating: “A person who is for the time being a legal academic of not less than 12 years’ standing shall be qualified for appointment as a judge of the Supreme Court, the Court of Appeal, the High Court, the Circuit Court or the District Court, but this is subject to subsections (2), (3) and (5).” It goes on to provide that a legal academic must have been a barrister or solicitor at some stage of his or her career and to have: “practised as a barrister or solicitor for a continuous period of at least 4 years.”

To put that in context, this effectively means that legal academics who have been a barrister or a solicitor for four years and practised as such will be eligible to be appointed if they have 12 years standing as a legal academic in addition to that. That is a lengthy period as the Senator will appreciate.

My first comment on this section and the amendments that have been tabled, if I may do so before we come back to the other amendments that Senator Norris has not mentioned at a later stage, is that I have the gravest of reservations about the first amendment to section 33(1). It provides that: “A judge of the District Court who has served as such a judge for a period of not less than 2 years shall be qualified for appointment as a judge of the High Court.” I cannot understand the circumstances in which somebody who was appointed to the District Court Bench, after two years would be an appropriate person to be appointed as a judge of the High Court by reason of having served on the Bench for two years.

We have to ask ourselves what possible circumstance could lead somebody to make such an application, and from now on people will be applying for all of these positions. If, say a barrister of ten or 12 years standing, is eligible and wants to be on the District Court Bench, why would he or she then say after two years that he or she wants to be a judge at the High Court and apply for same? I find that to be a remarkable proposition and I will go even further. It seems to me that nobody ends up on the District Court Bench except by their own voluntary choice and if somebody wants to be a judge in a summary court, I cannot imagine why, after two years serving in that position, they would suddenly say that it was a big mistake and that they should have applied to be a High Court judge. I also cannot see how two years of practice on the District Court Bench would transform one from somebody who was not eligible to be a High Court judge to be somebody who is eligible to be a High Court judge. I know that it would put one on the same basis as a barrister or a solicitor who has 12 years in practice anyway but they are not just a practising barrister of 12 years standing, they are somebody who has asked the Government to put them on the District Court Bench, has applied for that position and had a commission ask if they are a suitable person to be a District Court judge. Two years after that decision is made, that person is supposed to then say that they have changed their mind and they want to be a High Court judge.

I hope that members of the District Court Bench will not take this the wrong way but, by any standard, the work of a District Court judge and that of a High Court judge are dramatically different types of work. A District Court judge will get the odd complicated case but, most frequently, it is a court of summary jurisdiction and the judge is expected, and obliged, to be the kind of person who would spend a morning dealing with television licence defaulters, drink-drivers or minor assaults and to get through a list of ten to 20 cases and deal with remands and all of the rest of it. That would not be untypical. There are many good qualities required of a District Court judge, namely a capacity for hard work, speed and quick decision-making. The idea that a District Court judge will say, “I want to think about that”, or, “I want to reserve my decision on the application being made and I will come back with a written judgment in two

or three weeks”, is simply not how the District Court functions. Any District Court judge who operated that way, and listened to lengthy submissions like a High Court judge, would find that his or her court would disintegrate.

Second, a District Court judge might write a lengthy judgment once a year and many District Court judges would get through two or three years without ever writing a lengthy judgment of more than a page or a paragraph. However, we are asked by the Government in this section to suddenly deem such people, by reason of the fact they have done two years in the District Court, to be eligible for appointment to the High Court. Bearing in mind, as the Minister has agreed, that this legislation acknowledges the Government is not bound by the JAC’s process or recommendations at all and can make its own decisions, what we are actually doing is saying that a judge of the District Court, that is, somebody who has been appointed to the District Court, could at the say-so of the Government be appointed a High Court judge two years after their appointment.

I wonder in what circumstances that could happen. In what circumstances could somebody who has done two years on the District Court suddenly be transported to the High Court and asked to do a radically different job involving listening to complex cases such as Commercial Court cases, patent cases and constitutional cases? In what circumstances would somebody who applied to be a District Court judge suddenly either credibly want to be put on the High Court or credibly apply to the District Court two years earlier than applying to be a member of the High Court? I cannot see any circumstances in which that would happen, nor can I see how, in the life of the average District Court judge, anything could happen in regard to such a person to suddenly bump her or him up to the top of the queue as somebody who could be appointed to the High Court.

I will go one stage further. It is a big mistake and there is no justification for this, except some notion of trying to achieve equality among all judges, when they are not all equal, their job specifications are not equal and the criteria for appointment are not the same. I know, as the Minister knows, that when one is considering appointing somebody under the present system to the District Court, one does not ask oneself for one minute, “Is this person suitable for appointment to the High Court?” It would be utterly artificial and wrong to think that a Government, in appointing somebody to the District Court, would say, “By the way, after two years this person is going to be eligible to be appointed to the High Court”, or that we should take into account that eligibility in deciding whether they are suitable for the District Court. I do not accept that at all.

This is not some kind of legal snobbery, intellectual snobbery or intellectual contempt for the summary jurisdiction. It is simply saying that the two functions are radically different. On the one hand, we have somebody who is going to be expected to produce world-class judgments of a reserved kind, with judicial researchers, as a High Court appointee, and, on the other, we have somebody who is appointed to the District Court Bench to carry out a radically different type of function, which is dealing with public order offences and driving offences - 20 in the morning and ten in the afternoon - and to preside over sittings where 50 or 100 people are found guilty of having no television licence. To say that one thing compares with the other is, I am afraid, fundamentally untrue and nonsensical.

I do not say it is impossible that somebody on the District Court could be a High Court judge *manqué* who somehow got distracted into applying for the wrong court. However, I find it so unlikely and so fanciful that this would be a career path that I ask myself why we are be-

ing asked to bring it into law. It is illogical. On occasion during the debate, the Minister has accused me of coming up with extreme cases. However, who in the name of heaven would apply to be on the District Court Bench and two years later say, “I really think that now, after two years in the District Court, I should be appointed to the High Court”? What kind of person would do that? Yet, that is what we are legislating for here. It is bizarre.

I do not know whether an English district judge - it used to be the resident magistrate - after two years becomes eligible to be a high court judge in England but I very much doubt it, although I stand to be corrected, and if I am wrong, I am wrong; I do not study English legislation on this carefully as a night-time occupation at home. However, I would be surprised if two years service as a district judge in England suddenly made people eligible to be appointed to the high court in the English system.

We do not have to ape the English. However, we have to have a common law system which has the respect of not merely the Irish people but also the international community in terms of commercial investments, human rights protection standards and the like. If it is the case that this Bill envisages the commission asking itself, when it puts somebody onto the District Court, whether in two years time this person could also be eligible for the High Court, then I am deeply worried about the quality implications for the reputation of the Judiciary. Almost every practitioner has asked himself or herself the question, “Would I like to be a judge?”, although it is probably more solicitors than barristers in respect of some judicial positions. Generally, there is no doubt that nearly every solicitor who has a practice has at some stage or another queried themselves, “Would I like to be a judge? Would I like to retire from my practice as a solicitor and apply to be a judge?” However, for somebody who was considering applying to be made a judge of the District Court, be he or she a barrister or solicitor, there could not be in their mind a state of confusion or the thought, “By the way, after two years I will have a crack at being a High Court judge.” That is fanciful in the extreme and indefensible.

That is one provision of the section which is discrete and there needs to be much examination of why this has been done. The remainder of the section deals with an entirely different matter - the legal academics. Many lawyers are wrongly suspicious of the idea of making provision for a legal academic to be appointed a judge of the superior courts. I do not know what most people’s reservation would be. I have no problem in principle with a professor of law being made a judge. I especially have no problem with the idea of a professor of law who has practised as a legal practitioner prior to his or her appointment being appointed to a position in the superior courts. If we go to the amendment which Senator Norris has moved-----

Senator David Norris: He is moving it.

9 o'clock **Senator Michael McDowell:** The amendment proposes to “delete all words from and including “(1) Section 5” in line 6 down to and including line 17”, which relates to a judge of the District Court, and to leave in subsection (8). This amendment, if accepted, would radically simplify the basis on which individual legal academics could be appointed to the superior courts. It would state:

Section 45A (inserted by section 33(4) of the Judicial Appointments Commission Act 2018) provides an additional basis for qualification for appointment as a judge of the Supreme Court, the Court of Appeal or the High Court.

What professor of law or legal academic would want to be appointed to be a District Court

judge? There is a good deal of sense to the amendment, which asks that fundamental question. I support having a means of entry into the legal profession and hierarchy for intellectual jurists, which is what legal academics are. It would be based on their experience as an academic and the fact that before they became an academic they had some basic experience for a number of years as a practitioner in either branch of the legal profession. Surely we must want them to enrich the Judiciary by bringing in their academic approach and knowledge of jurisprudence.

Senator David Norris: Not a lot of use in the District Court.

Senator Michael McDowell: I will not dismiss the District Court and say it would not be of much use there but I cannot imagine why somebody who has all of this experience as a legal academic would want to spend time dealing with cases such as people having no lights on their bicycles and no television licence. We have to ask what is going on in this section. It is one thing to say we should have some port of entry into the Judiciary at a senior level for people who are serious jurists and have gone the academic route, having been a practitioner. That is the philosophy of the section as it stands. It is another thing to say we will provide that the District Court can be the place where senior legal academics get to spend the rest of their lives. What are we doing? It is Alice in Wonderland stuff. Who, having spent 12 years as a legal academic and having been a practitioner for four years before that, well into their career would suddenly want to revert from being a jurist to being a District Court summary judge? It escapes me completely. I am against the principle of doing this.

The late Professor John Kelly was appointed Attorney General and was one of our foremost constitutional lawyers, with the fifth edition of his book due to be posthumously launched on Thursday evening. It is one of the major textbooks of Irish constitutional jurisprudence and the authoritative work on the Constitution. I am content that someone such as him would be eligible to be appointed to a position of High Court judge. His collaborator, Professor Gerard Hogan, became a practitioner and a judge thereafter and is now in Luxembourg as advocate general in the European Court of Justice. Another collaborator, Professor Gerry Whyte, is at Trinity College Dublin. I do not doubt they are people who should be capable of having a port of entry into the senior Judiciary and I have no problem with that. I am not commenting personally on them but refer to people of their standing. I have a major problem with scrambling up the idea of legal academics on one hand and the District Court on the other turning things on their head and saying that legal academics as jurists should somehow be eligible to be made District Court judges. I do not see the logic of it. It is hard to defend in any realistic scenario that any of these people would want to do that.

The Minister's intended amendment of section 45A(1) the Courts (Supplemental Provisions) Act 1961, set out in section 33(4), states:

A person who is for the time being a legal academic of not less than 12 years' standing shall be qualified for appointment as a judge of the Supreme Court, the Court of Appeal, the High Court, the Circuit Court or the District Court

Senator Bacik's amendment effectively knocks the Circuit Court and District Court out of it, which makes sense. The Minister's amendment to the 1961 Act suggests:

Without prejudice to subsection (5), a person of such standing shall have been employed as a legal academic for a continuous period of not less than 2 years immediately before such appointment.

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They have to have been a legal academic for two years. It then states:

Subsection (1) shall only apply to a legal academic—

(a) who, at the time of the appointment referred to in that subsection, is a barrister or a solicitor, and

(b) who has practised as a barrister or solicitor for a continuous period of at least 4 years,

and subsequent subsections of this section, in so far as they relate to a person who is referred to in them as a ‘head of a faculty’ or ‘head of another faculty’, shall not be construed as enabling such a person to be the subject of such an appointment unless the person—

The appointment referred to is as a legal academic.

An Cathaoirleach: I must interrupt Senator McDowell and ask him to report progress as we have reached the end of our two-hour period.

Progress reported; Committee to sit again.

An Cathaoirleach: When is it proposed to sit again?

Senator Martin Conway: Maidin amárach ar 10.30.

The Seanad adjourned at 9.10 p.m. until 10.30 a.m. on Wednesday, 21 November 2018.